

Wednesday, April 29, 2020 (Update #2)

To: New York Community Bankers

FROM ICBA

Community bank loans getting through: SBA

Community banks under \$10 billion in assets neared the \$30 billion in Paycheck Protection Program funds set aside for them by the law restarting the program, according to reports of Small Business Administration data. The SBA reportedly said that as of 1 p.m. (Eastern time) Tuesday, these institutions made 331,119 approved loans worth nearly \$30 billion.

They will continue to be able to submit loans to be funded by the \$250 billion in general funds authorized for the second phase of the PPP.

Lenders with between \$10 billion and \$50 billion in assets have been approved for nearly 84,000 loans worth more than \$10 billion. The law allocated \$30 billion of the overall \$310 billion for these institutions.

Overall, the SBA said it has approved more than 475,000 loans worth more than \$52 billion from more than 5,100 lenders. The agency said the average loan size under phase two of the PPP is \$111,000, down from \$207,000 in the first round. Roughly 85 percent of the loans have been worth \$150,000 or less, it said.

ICBA continues encouraging community bankers to use its **Be Heard grassroots alert** to tell policymakers to ensure community banks have equitable access to PPP systems and to demand answers on why so many community banks have been locked out from submitting loans.

Treasury issues guidance on disbursements, collecting fees

The Treasury Department on Tuesday night issued a **new interim final rule** that answers questions on Paycheck Protection Program disbursements, including collecting processing fees on disbursed loans.

The interim rule says borrowers are not permitted to make multiple draws from a PPP loan and thereby delay the start of the eight-week covered period. Rather, lenders must make a one-time, full disbursement of the PPP loan within 10 calendar days of when the loan is assigned a loan number by SBA.

For loans that received an SBA loan number prior to the posting of this interim final rule but have not yet been fully disbursed, the 10-day period begins as of April 28 and the eight-week covered period began on the date of first disbursement.

The rule also says lenders are not responsible for delays in disbursement attributable to a borrower's failure to provide required loan documentation in a timely fashion, including a signed promissory note. Loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender.

If the 10th calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day, according to the rule. When disbursing loans, lenders must send any amount of loan proceeds designated for the refinance of an Economic Injury Disaster Loan directly to SBA and not to the borrower.

Further, the interim final rule includes information on collecting fees for PPP loans. It says:

- SBA will make available a specific SBA Form 1502 reporting process through which PPP lenders will report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled.
- Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 18.

- Lenders will not receive a processing fee: (1) prior to full disbursement; (2) if the PPP loan is cancelled before disbursement; or (3) if the PPP loan is cancelled or voluntarily terminated and repaid after disbursement.
- Lenders will be required to provide ACH credit information to direct payment of the requested processing fee and to confirm that all PPP loans for which the lender is requesting a processing fee have been fully disbursed on the disbursement dates and in the loan amounts reported.

<https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Disbursements.pdf>

Treasury on PPP: No to private companies, yes to audits

The Treasury Department said businesses owned by private companies with adequate sources of liquidity are unlikely to qualify for the Paycheck Protection Program. In the latest update to its frequently asked questions on the program, Treasury cited a previous entry that said public companies with substantial market value and access to capital markets are unlikely to qualify. <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

The FAQs say these larger companies likely could not certify in good faith that a PPP loan request is necessary to support their ongoing operation. The updates come after the Los Angeles Lakers and restaurant chains such as Ruth's Chris Steakhouse and Shake Shack returned PPP funds following a public backlash.

Also Tuesday, Treasury Secretary Steven Mnuchin said his department will audit all PPP loans over \$2 million before the forgiveness phase to ensure they were made in good faith. Mnuchin said Treasury will also conduct random audits of loans under \$2 million.

Under an SBA **interim final rule**, PPP borrowers may repay the money by May 7 without penalty if their original certification was not valid.

ICBA continues updating its FAQs on the PPP on its **COVID-19 resource center**.

SBA Bars Robotic Processing Of PPP Loans

The SBA on Tuesday barred the use of Robotic Processing Automation to submit Paycheck Protection Program loans into the agency's E-Tran loan system. https://icba-now.informz.net/icba-now/data/images/NWT/Documents/20.04.28_SBA_Guidance.pdf. The SBA said prohibiting RPAs—robotic systems that some banks use to mimic human data entry—will make the loan-processing system more reliable, accessible, and equitable. The SBA said Application Programming Interface, or APIs, will still be permitted. Lenders who need assistance converting their submission processes to a non-RPA API can contact SBA's Sheri McConville at Sheri.Mcconville@sba.gov. With technical glitches continuing to hamper the relaunch of the PPP for E-Tran and SBA Connect Lender Gateway users, ICBA continues encouraging community bankers to **tell policymakers** to ensure community banks have equitable access to PPP systems.

Meanwhile, community bankers can direct E-Tran and SBA Connect Lender Gateway assistance questions to the SBA at 833-572-0502 or cls@sba.gov. Additional guidance and resources are available on **Treasury's PPP webpage** and **ICBA's COVID-19 resource center**.

Treasury Releases PPP Framework For Seasonal Businesses

The Treasury Department released an Interim Final Rule confirming that seasonal employers are eligible for Paycheck Protection Program loans under an alternative base period. <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Criterion-for-Seasonal-Employers.pdf>. The interim rule allows seasonal employers to use their monthly average payroll payments for any consecutive 12-week period between May 1, 2019, and Sept. 15, 2019, to determine their maximum loan amount. Treasury said the base period laid out in the CARES Act would leave many summer seasonal businesses unable to obtain funding on terms commensurate with those available to winter and spring seasonal businesses.

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FROM THE OCC:

Credit Administration : Documentation of SBA Paycheck Protection Program Loans - UPDATE

Summary

The Office of the Comptroller of the Currency (OCC) is issuing this bulletin to clarify its statement in **OCC Bulletin 2020-44, which is hereby rescinded**. Loans made by banks¹ under the Small Business Administration's (SBA) Paycheck Protection Program (PPP) are an important part of the federal COVID-19 response program for small business and may qualify for credit under the Community Reinvestment Act (CRA). While not requiring banks to obtain or maintain information beyond what exists in the ordinary course of business, the OCC is encouraging banks providing loans under the SBA PPP to prudently document their implementation and lending decisions. Additionally, banks are encouraged to identify and track the PPP loans made to small business borrowers that have annual revenues of \$1 million or less and are located in low- to moderate-income (LMI) areas. <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-45.html>

Highlights

As part of the PPP, banks may accept applications from both existing small business customers and applicants who are not current loan customers. When working with all applicants, in addition to adherence to the SBA PPP program requirements, banks are encouraged to collect and track information provided during the application process regarding borrowers' annual revenue, and for loans made in LMI census tracts, distressed areas, and underserved areas, and that benefit LMI individuals, families, and communities.² Maintaining and monitoring this information, where available, in the administration of the SBA PPP is a prudent banking practice consistent with the principles of safety and soundness and fair access and fair treatment of borrowers,³ and other applicable legal requirements. Prudent practices may also include documenting implementation decisions—such as the bank's business justifications and any alternatives considered—when setting eligibility criteria, establishing processes for considering applications, and approving or denying PPP applications. Relevant business considerations may include estimates of resources needed to implement and offer the SBA PPP, current available resources (including staff resources), and the ability to access needed information about an applicant in a timely way, among other factors.

In addition to thorough documentation of program administration and loan decisions, banks are encouraged to identify and track PPP loan volumes. Such documentation serves to enhance overall credit risk management while enabling the bank to demonstrate the full spectrum of businesses served, including small businesses and those in LMI areas. When exercising supervisory and enforcement responsibilities in this area, the OCC will take into account the unique circumstances resulting from the national emergency and good faith efforts to comply with applicable legal requirements.

Further Information

Please contact Lou Ann Francis, Director for Commercial Credit, at (202) 649-6670 or Vonda Eanes, Director for CRA and Fair Lending, at (202) 649-5470.

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Senior Deputy Comptroller for Bank Supervision Policy

Related Links

[§SBA PPP](#)

[§SBA PPP Frequently Asked Questions](#)

1 “Banks” refers collectively to national banks, federal savings associations, and federal branches and agencies of foreign banking organizations.

2 Such information may be used to track loan volumes for CRA purposes. Refer to the “Joint Statement on CRA Consideration for Activities in Response to COVID-19” attached to [OCC Bulletin 2020-19](#).

3 The Equal Credit Opportunity Act (ECOA) and Regulation B prohibit discrimination against an applicant on a prohibited basis regarding any aspect of a credit transaction, and prohibit discouraging a reasonable person, on a prohibited basis, from making or pursuing an application. See 12 CFR 1002.4(a) and (b). The prohibition on lending discrimination in ECOA and Regulation B applies to all creditors and to both business credit and consumer credit.

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U.S. Economy Shrinks 4.8 Percent In First Quarter Of 2020

It's the biggest quarterly drop in over a decade, and shows the beginning of an economic slowdown that is expected to worsen as the coronavirus "roils" the economy.

https://www.axios.com/us-gdp-shrinks-48-coronavirus-47e0e440-07b3-43ea-9e17-15dd8559a1d5.html?stream=top&utm_source=alert&utm_medium=email&utm_campaign=alerts_all

Consumer Confidence Falls In April

The Conference Board's **Consumer Confidence Index** fell sharply in April due to a severe deterioration in assessments of current conditions. The index declined to 86.9 from 118.8 in March. The Present Situation Index fell to 76.4 from 166.7, though the Expectations Index of consumers' short-term outlook increased from 86.8 to 93.8.

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IBANYS will continue to provide updates as additional information becomes available. Thank you all for your continued participation and support.

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