

Please note:

All of our IBANYS Coronavirus (COVID-19) Updates, beginning with the first on March 16, are available on our website. Here is the direct link to view all our updates:

<https://ibanys.net/covid-19/>

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SPECIAL ALERT: The Treasury Department is reportedly preparing to seek more than \$200 to \$250 billion to replenish small business coronavirus program (PPP): "The Treasury Department is asking for more than \$250 billion to replenish a new small business loan program that's being quickly spent down." . . .

- <https://www.inquirer.com/health/coronavirus/treasury-department-small-business-coronavirus-program-funding-20200407.html?outputType=amp>
- <https://nationalpost.com/pmnl/health-pmnl/u-s-treasury-preparing-to-ask-for-further-200-bln-for-small-business-lending-washington-post/amp>

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This morning, IBANYS and a number of community banks located in the twelve-county 23rd congressional district participated in an update and outreach conference call with Congressman Tom Reed, who is also a member of the House Ways & Means Committee and the bipartisan "problem solvers" coalition in Congress. This was the third such call with Rep. Reed, and participants expressed sincere appreciation for his ongoing accessibility and support. Also on the call was David Bridges, the Congressman's tax counsel and senior advisor on these issues.

Issues raised by participating bankers included:

- There was concern over the status of a reported newly revised note from SBA regarding lenders' exposure and responsibility.
- There was also concern over a 5-day period between the SBA approval of the loan application and getting the funds into the borrowers' hands.
- Also raised was the SBA's "affiliation rule" pertaining to bank directors' being precluded based on 10% ownership threshold.
- The ongoing challenges posed by the e-trans process is also a concern. The process has been very slow in terms of getting approval of banks' internal personnel to process.
- There is a problem listing non-profits on the application -- here is no specified space provided on the form.
- There was a question raised regarding whether a loan would be deemed approvable to a sole proprietor of a business (e.g., a hair salon) that is not an essential business and is therefore closed, but which wants to maintain its viability and reopen once permitted.
- There is concern among a number of community banks that have been "slammed" by applications, and are dealing with backlogs. The process with SBA takes between 20-to-40 minutes per application. Meanwhile, the large banks will go "live" with direct tie-in to the SBA system, their applications will move fast, and the \$350 Billion could go quickly. There is concern community banks could be left "high and dry" under those circumstances, and suffer reputational risk, and seen as having "dropped the ball." There was a request that Rep. Reed and his colleagues in Congress, and/or the administration and SBA/Treasury attempt to help calm the

anxieties and high concern among borrowers who fear they will not get their funds, and may hold the community banks responsible.

Rep. Reed and Counsel Bridges addressed these concerns.

- The SBA is operating with an antiquated system that has been challenged by this process, has not been sufficiently flexible and has at times reverted to its standard practices. His office has spoken to Treasury Secretary Mnuchin about this and a number of other issues and is and will continue to be in consistent contact with the SBA. His office is also pushing for the release of the revised SBA note to provide any updated guidance.
- One thing banks can do to try to move the process along is to encourage borrowers to have ready the documentation SBA requires (previous tax return, income and expenses reports, payroll documentation) at the time of application. His office is pushing for a way to hasten the SBA's e-trans approval process, and will act as an intermediary for providing the pre-qualified names banks forward to them to SBA and push for approval.
- There is no clarity as yet on the directors preclusion issue, but the SBA has the regulatory authority to make changes; no legislative correction is required. regarding the sole proprietor issue, Rep. Reed noted that borrower could also utilize unemployment benefits provided under the CARES Act (and which would not ordinarily be available for this use). Rep. Reed noted that the essential/non-essential business deadline has now been extended until April 29 by the Governor.
- Rep. Reed urged lenders to also reach out to non-customers regarding loans. One banker on the call noted that some such potential borrowers may find it a challenge to connect with the banks, since branches have been closed down and service is basically restricted to drive through or by appointment only. The banker suggested these non-customers could utilize the banks' call centers to make contact.
- Rep. Reed Regarding the concern over large bank applications moving fast, and the \$350 Billion being exhausted, Rep Reed noted that 1) He firmly expects there will be more funds made available if the \$350 Billion is exhausted (**NOTE: SEE LINK TO ARTICLE BELOW FOR MORE ON THIS**), and that the SBA is also working on a new portal that would speed up the current application process being used by community banks.
- Rep. Reed said he has heard extremely positive things about the role community banks have been playing, and thanked them for stepping up. He also said the intent of the legislation was to establish that the federal government, not the lenders, is "the backstop" in terms of responsibility. If banks act in good faith, the government will "have their back." He also said he would publicly say (in the media) that more funding would be available if the current \$350 Billion pool runs out; would urge patience, and would try to reassure borrowers and calm any sense of anxiety they may have about not being able to get their funds. He also would reiterate the positive role of community banks in the process.
- Rep. Reed also noted the Federal Reserve, recognizing the liquidity issue, has a plan to buy back the loans from banks that wish to sell them. There was a press release from the Fed issued yesterday.

SPECIAL ALERT: According to "The Washington Post" the Treasury Department is preparing to seek more than \$200 to \$250 Billion billion to replenish small business coronavirus program (PPP): "The Treasury Department is asking for more than \$250 billion to replenish a new small business loan program that's being quickly spent down." . . .**Read in The Washington**

Post: <https://apple.news/ANu38bh3fSmGFjD5g7cox0w>

OTHER UPDATES:

I. More clarifying guidance is anticipated from SBA/Treasury on Reg. O and promissory notes. Some of your questions are addressed through **these FAQs from Treasury:**
<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

II. OCC Supports FinCEN's Regulatory Relief and Risk-Based Approach for Financial Institution Compliance in Response to COVID-19

The Office of the Comptroller of the Currency (OCC) recognizes the recent disruptions and significant challenges faced by banks as a result of the coronavirus disease (also known as COVID-19). In light of these developments, on April 3, 2020, the Financial Crimes Enforcement Network (FinCEN) issued an updated COVID-19 notice (FinCEN BSA Notice) that recognizes the effect these circumstances may have on the ability of financial institutions to meet certain Bank Secrecy Act (BSA) obligations, including the timing requirements for certain BSA report filings. . . **To read the full statement, click on the link provided:**

<https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-34.html>

. . .And, also, this related link provided by OCC:

<https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial>

. . .For more details, contact Rafael (Ralph) E. DeLeon Director for Banking Relations/National Bank Examiner: (202) 649-6736 office, (202) 359-0096 cell; ralph.deleon@occ.treas.gov

III. Updates From ICBA

Fed To Launch ICBA-Advocated PPP facility

The Federal Reserve will launch an ICBA-advocated facility to provide term financing backed by loans originated under the Small Business Administration's Paycheck Protection

Program: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200406a.htm>

The announcement follows this weekend's ICBA call for a secondary market

facility https://www.icba.org/news/icba-in-the-news/press-releases/2020/04/05/icba-sends-urgent-payment-protection-program-recommendations-to-treasury-and-sba?utm_source=informz&utm_medium=email&utm_campaign=informz&_zs=njOgU&_zl=QLQ32 for

the Fed to purchase program loans from originating institutions. In its Saturday night letter responding to community bank problems accessing the PPP, ICBA also called on policymakers to enhance the

overburdened SBA systems, increase program funds, and dedicate funds to community

banks. Meanwhile, ICBA continues calling on policymakers to immediately launch its PPP portal for non-SBA lenders, which have had many problems accessing the new program. **The SBA continues**

encouraging lenders who need assistance to call its Lender Customer Service Line at 833-572-0502, though community bankers who have called that number are reporting mixed results on the agency's assistance. PPP resources are available on the Treasury and SBA websites.

Agencies implement ICBA-advocated CBLR reduction

Federal regulators issued interim final rules implementing the CARES Act's ICBA-advocated temporary reduction in the Community Bank Leverage Ratio to 8 percent. <https://www.fdic.gov/news/news/financial/2020/fil20035.html>. Under the new rules, community banks can use the 8 percent CBLR through the end of 2020 and 8.5 percent for calendar year 2021, with the current 9 percent CBLR resuming Jan. 1, 2022.

The rules also maintain a two-quarter grace period for qualifying community banks whose leverage ratio falls no more than 1 percent below the applicable community bank leverage ratio. The changes will be effective upon publication of the rules in the Federal Register, with comments due within 45 days afterward. The CARES Act response to the COVID-19 outbreak includes several other ICBA-advocated measures to support community banks, including relief related to taxes, transaction accounts, loan modifications, Current Expected Credit Losses implementation, and more.

ICBA continues to update its frequently asked questions on the Paycheck Protection Program:

https://www.icba.org/advocacy/industry-issues/lending/small-business-lending/community-bank-covid-19faqs/?utm_source=informz&utm_medium=email&utm_campaign=informz&zs=njOgU&zl=cLQ32

and other elements of the federal response to the COVID-19 outbreak. The latest updates cover recent guidance on affiliated companies, faith-based organizations, payroll requirements, and various other aspects of the PPP. These updates join numerous other FAQs on stimulus payments, mortgage lending, loan modifications, and more. ICBA will continue adding to this resource to provide clarity to community bankers about the COVID-19 response programs.

Additional resources on the COVID-19 response are available on ICBA's Crisis Response and Preparedness Toolkit:

https://www.icba.org/news/CrisisPreparedness?utm_source=informz&utm_medium=email&utm_campaign=informz&zs=njOgU&zl=eLQ32

FinCEN: Banks Don't Need To Reverify Beneficial Ownership Info For PPP Loans To Existing Customers. . .

The Financial Crimes Enforcement Network said **banks will not be required to re-verify beneficial ownership information for Paycheck Protection Program loans for existing customers**, unless otherwise indicated by the institution's risk-based approach to Bank Secrecy Act compliance:

<https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial>

For non-PPP loans, FinCEN reminded institutions of its 2018 ruling offering certain exceptive relief to beneficial ownership requirements and recognizing that a risk-based approach may result in reasonable delays in compliance.

- **If you were not able to access this morning's ICBA webinar program, "The Great Pause of 2020 – What COVID-19 Means for Community Banks,"** the webinar focused on how community banks can continue to operate in the current environment and the potential outlook for strategic and capital planning, regulatory issues, board governance, shareholder concerns, and other areas. A recording will be available 24 hours after the event (tomorrow morning) at icba.org.

IV. Updates Other State Community Bank Trade Associations

Texas: -- Issues Raised By Their Member Banks:

Q. Can we make PPP loans to bank directors?

A. While we are awaiting further guidance from the Treasury Department or the SBA, the answer to this question is unclear. This is primarily because of certifications that the lender is asked to make in the SBA

portal when processing the loan. These certifications are supposed to be changed but until further notice, we recommend you process your directors' applications for the loan but do not fund them until there is further guidance.

Q. What note should we use to close the loan?

A. There are a variety of answers to this question but nothing definitive from the SBA. As we see it, the lender currently has two options:

1. Get everything ready and wait to fund the loan until we get additional clarification on the note; or
2. Use your existing commercial note with the following language added:

“When SBA is the holder, this Note will be interpreted and enforced under Federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any Federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt Federal law.”

The language in option two has been sent to several bankers from representatives at various SBA offices. Option two comes with risk that guidance will come after the fact and that use of your own note, even with this language, may not meet the necessary requirements if you demand on the guaranty.

Late last night, Treasury issued another set of [FAQs](#). Unfortunately, these two important issues were not addressed. We will continue to press for additional clarification that will hopefully be forthcoming soon.

Unemployment Claims Update

The New York State Department of Labor (DOL) is reportedly "beefing up" its numbers of phone-bank workers and computer servers to accommodate a historic crush of jobless claims created by the coronavirus, officials said Monday. Governor Cuomo's top aide, Melissa DeRosa, noted: "Just so everyone understands, at the peak of the 2008 [fiscal] crisis, the single largest day of claims was 13,000. We had six times that two days ago." State officials said that 369,000 unemployment claims were submitted during the most recently reported week, which ended March 28. That does not count the thousands upon thousands still "stuck in the backlog." DeRosa noted: "We're going to be releasing a new interface by the middle of this week," and said DOL has also partnered with Google, expanded its hours and become a seven-day-a-week operation. "We've gone from four servers to 50 servers. We just put 300 more people, in addition to the 700 people that were managing the call system."

What's Next? Press Updates On A "Phase Four" Package. . .

President Trump and congressional leaders are reportedly considering the possible need for a new coronavirus economic package." Click on the links to read press coverage: <https://wapo.st/2yI8O8T>; <https://bit.ly/2x9EzHp>; <https://politi.co/2XgXH0O>