

Thursday, May 14, 2020 (Update # 1)

To: New York Community Banks,

Hope everyone is safe and well.

Yesterday, the New York State Legislature held a virtual public hearing on issues related to the pandemic, its impact on New York small businesses and the federal response. IBANYS was represented by our board member Anders Tomson (President & CEO of Chemung Canal Trust), and he did a tremendous job in his testimony and in answering a number of questions from members of the State Senate and Assembly.

We thank Anders for stepping up on behalf of community banks throughout New York State, and we have attached his written testimony for your review.

This morning's update has news from the White House, ICBA, SBA & Treasury, and New York sources.

-- John

FROM ICBA

Agencies Announce PPP Certification Safe Harbor

The SBA and Treasury Department announced a safe harbor that will apply to reviews of good-faith certifications concerning the necessity of Paycheck Protection Program loan requests. In the latest update to their [frequently asked questions](#) on the program, the agencies said any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

The agencies said:

- Borrowers with loans below this threshold are generally less likely to have access to adequate sources of liquidity, and the safe harbor will promote economic certainty for them.
- The SBA previously said all PPP loans over \$2 million—and other loans as appropriate—will be subject to review.
- Borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification.
- If SBA determines that a borrower lacked an adequate basis for the required certification, it will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness.
- If the borrower repays the loan after receiving notification from SBA, the agency will not pursue administrative enforcement or referrals to other agencies.
- SBA's determination on these certifications will not affect its loan guarantees, which remain in place.

Community bankers who continue to have trouble with the SBA's E-Tran and SBA Connect Lender Gateway portals can direct 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](#).

SBA Answers Questions On PPP Loan Increases, Disbursements

The SBA issued an [interim final rule](#) with answers to questions on Paycheck Protection Program loan increases and disbursements as well as 1502 reporting. The rule says:

- If a partnership received a PPP loan that did not include any compensation for its partners, lenders may increase the loan amount to include partner compensation.
- If a seasonal employer received a PPP loan before the alternative criterion for determining the maximum loan amount for seasonal employers became available, the loan amount may be increased based on a revised calculation using the alternative criterion.
- If a borrower's PPP loan has already been fully disbursed, lenders may make an additional disbursement for the increased loan proceeds.

- However, these types of loan increases cannot be made once the first SBA Form 1502 report has been filed on the loan or the due date for the first Form 1502 report on the loan has passed.
- As detailed in its May 8 [interim final rule](#), lenders must submit Form 1502 information within 20 calendar days after a PPP loan is approved, or by May 22 for loans approved before the form is available, to collect processing fees on fully disbursed PPP loans.

Responses To SBA On Repaid PPP Loans Due Today

The SBA on Saturday, May 9, distributed emails to Paycheck Protection Program lenders seeking data on loans that have been disbursed and repaid. The email from SBA Chief of Staff and Associate Administrator William Manger was sent via the CAFS Login System secure email system (CLS@sba.gov), so lenders can securely respond with the requested borrower information. Responses are due by 5 p.m. (Eastern time) today.

CFPB Outlines Flexibilities, Responsibilities During Pandemic

The [Consumer Financial Protection Bureau](#) issued a statement and released two frequently asked questions documents to highlight existing regulatory flexibilities for financial firms to quickly help consumers affected by the pandemic. One set of FAQs focuses on existing regulatory flexibilities in Regulations E and DD for providers of checking, savings, or prepaid accounts. Separate FAQs focus on existing regulatory flexibilities for open-end credit (that is not home-secured) in Regulation Z. The CFPB statement outlines billing-error responsibilities of credit card issuers and other open-end, non-home secured creditors as well as the bureau's current approach to creditor investigations of consumers' billing-error notices.

FHFA: payment deferral is new repayment option

The [Federal Housing Finance Agency](#) said [Fannie Mae](#) and [Freddie Mac](#) are providing a new payment-deferral option to help homeowners in COVID-19-related forbearance. The deferral option allows borrowers who can return to making their normal monthly mortgage payment to repay their missed payments at the time the home is sold, refinanced, or at maturity. The FHFA noted that borrowers' monthly mortgage payments will not change and mortgages that exercise payment deferral will remain in Enterprise Mortgage-Backed Securities. Servicers will begin offering the option starting July 1. ICBA is updating its comprehensive [frequently asked questions](#) on the federal COVID-19 response.

ICBA backs capital relief for PPP Liquidity Facility

ICBA expressed strong support for an interagency interim final rule that allows banking organizations to neutralize the regulatory capital effects of loans pledged to the Paycheck Protection Program Liquidity Facility. Noting that the relief applies to both risk-based and leverage capital ratios, including the Community Bank Leverage Ratio, ICBA said it agrees that the rule will help community banks respond to the ongoing economic consequences of COVID-19 and bring relief to businesses that are struggling. [Read ICBA's comment letter.](#)

ICBA PPP loan-forgiveness push continues

Community bankers can continue to use ICBA's [Be Heard grassroots action center](#) to urge policymakers to make the following changes to the Paycheck Protection Program:

- Reconsider the SBA's non-statutory requirement that 75 percent of PPP loan proceeds must be spent on retaining payroll.
- Provide a straightforward, easy-to-apply approach to loan forgiveness, such as developing a PPP loan-forgiveness calculator.
- Establish a presumption of compliance for all loans with an original balance of \$1 million or less based on the borrower's certification.
- Address the many questions that have arisen related to PPP loan forgiveness.

FROM THE WHITE HOUSE

The U.S. Department of the Treasury and U.S. Small Business Administration released new information regarding the Paycheck Protection Program:

- [Frequently Asked Questions](#) (Question 46 regarding the safe harbor and required certification)

- Reminder: On Saturday, May 9, 2020, SBA sent a message from William Manger, Chief of Staff & Associate Administrator, Office of Capital Access to all PPP lenders from the CAFS Login System (CLS) secure email system. The message was regarding a specific data request. If your institution has *not already* completed this request, please provide your response no later than 5pm EDT Thursday, May 14, 2020.

Assistance for Small Businesses

The Paycheck Protection Program is providing small businesses with the resources they need to maintain their payroll, hire back employees who may have been laid off, and cover applicable overhead.

Program Overview

- [Top-line Overview of PPP](#)
- [SBA Paycheck Protection Program Loan Report](#)
- [SBA Paycheck Protection Program Loan Report Round 2](#) – Updated 5/3
- [Summary of Paycheck Protection Program Round 2 Data](#) – Updated 5/13

For Borrowers

- [More information](#)
- [Search Tool: Find an Eligible Lender](#)
- [Borrower Application Form](#)
- [Applicable Affiliation Rules](#)
- [How to Calculate Loan Amounts](#)

For Lenders

- [More information](#)
- [Lender Application Form](#)
- [Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions](#)
- [Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders](#)
- [SBA Procedural Guidance on Participation Sales](#)
- Lender Assistance Hotline: (833) 572-0502

Program Rules

- [Frequently Asked Questions](#) – Updated 5/13
- [Interim Final Rule 1](#)
- [Interim Final Rule on Applicable Affiliation Rules](#)
- [Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#)
- [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#)
- [Interim Final Rule on Additional Criterion for Seasonal Employers](#)
- [Interim Final Rule on Disbursements](#)
- [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#)
- [Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria](#) – Updated 5/5

For more information and updates, visit [Treasury.gov/CARES](https://www.treasury.gov/CARES) and [SBA.gov/PayCheckProtection](https://www.sba.gov/PayCheckProtection).

FROM SBA

- **During this morning's IBANYS Executive Management Discussion Group call, SBA Regional Administrator Steve Bulger and SBA Deputy District Director for Upstate New York Dan Rickman announced that lenders with questions or issues related to the 1502 Form and process, lenders should go directly to the *colson services website* (www.colsonservices.com) to access the 1502 dashboard. (Reminder: Next week's call will include updates from the Federal Home Loan Bank of New York. If you are not signed up to participate in these calls, please contact Linda Gregware: Lindag@ibanys.net)**

ICBA received the following information this morning from Dan Rickman, Deputy SBA Director/Upstate New York:

"Good morning. . . some big updates below. . ."

EIDL message from SBA's Office of Disaster Assistance:

1. Question: My Economic Injury Disaster Loan (EIDL) was approved but the amount was lower than I was expecting, why is it lower?

Answer: We had to make a difficult decision to limit loan amounts to ensure the program reaches as many small businesses as possible. SBA may be able to further assist you with funding through our Paycheck Protection Program (PPP), which provides up to 8 weeks of forgivable loan funds to cover payroll, as well as mortgage interest, rent and utility costs. We encourage you to visit [sba.gov/paycheckprotection](https://www.sba.gov/paycheckprotection) to obtain more information about PPP loans.

2. Question: I read that the EIDL program provides up to \$2 million per loan. Will it be possible to increase my loan amount?

Answer: Historically, the maximum amount of EIDL assistance is 2 million dollars. During these unprecedented times and given our current funding levels we do not expect to increase loan amounts for the EIDL program.

PPP Interim Final Rule on post-disbursement loan increases for partnerships and seasonal employers:

This rule provides guidance for certain borrowers for whom the original PPP loan amount may need to be increased based on subsequent published guidance.

<https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule-requirements-loan-increases-partnerships-or-seasonal-employers>

Safe Harbor deadline extended to 5/18, FAQ number 47:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

Dan Rickman, Deputy District Director Upstate New York, U.S. Small Business Administration:
(315) 471-9393 ext. 241; (518) 951-9274 cell

OTHER UPDATES

SBA & Treasury: No Legal Consequences For Firms Deemed Ineligible For PPP Loans

The Small Business Administration and Treasury Department have issued guidance saying that companies that accepted loans of more than \$2 million under the Paycheck Protection Program but are later deemed ineligible can repay the money without legal consequences, backing off an earlier assertion that the government could pursue criminal legal action. Businesses that took loans under \$2 million will automatically be assumed to have done so in good faith, according to the guidance. ([Bloomberg](#))

New York State Has Paid \$7.4 Billion In Unemployment Since March

New York has paid out \$7.4 billion in unemployment benefits since March when the coronavirus pandemic began to wreak havoc on the state's economy. The state Department of Labor on Wednesday announced 330,000 people who filed to receive benefits from the Pandemic Unemployment Assistance Program were approved. The state has struggled with the wave of unemployment claims as non-essential businesses close and workers lose their jobs

or face furloughs. The total paid out in benefits in 2019 was \$2.1 billion. Nationally, another 2.98 million Americans filed for unemployment last week, the Labor Department said on Thursday. The coronavirus is still forcing a historically high number of Americans out of work. In two months alone, more than 36 million people have filed jobless claims. The total number of people continuing to receive unemployment benefits — after initially applying — rose, bringing the total to a record 22.8 million. A decrease in this figure would be an indication that Americans are returning back to work. Goldman Sachs [estimates](#) the unemployment rate will hit 25%, matching the peak level of joblessness during the Great Depression.

Gillibrand Calls For \$100 Billion In Rental Assistance

U.S. Senator Kirsten Gillibrand (D-NY) says the next coronavirus stimulus package should include \$100 billion in rental assistance to help families stay in their homes amid an economic crisis created by the pandemic. At the same time, she is backing a provision that would provide \$11.5 billion for state and local governments to aid families and people who are left homeless due to the crisis.

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

- **John J. Witkowski, President & CEO (Johnw@ibanys.net; 716.880.0518)**
- **Stephen W. Rice, Director, Communications & Government Relations (Stever@ibanys.net)**