

Thursday, June 18, 2020

To: New York Community Banks

FROM ICBA

New PPP forgiveness applications issued

While the SBA and Treasury Department [released](#) updated Paycheck Protection Program loan-forgiveness applications implementing PPP Flexibility Act reforms, ICBA continues pressuring the agencies to simplify loan forgiveness.

The agencies issued a revised [full forgiveness form](#) and new [EZ application form](#) requiring less calculation and documentation as well as updated instructions for the regular [Form 3508](#) and [Form 3508EZ](#).

The new EZ form applies to borrowers that:

- Are self-employed and have no employees, or
- Did not reduce their employees' salaries or wages by more than 25 percent and did not reduce their employees' number or hours, or
- Experienced reductions in business activity due to health directives related to COVID-19 and did not reduce the salaries or wages of their employees by more than 25 percent.

The SBA also issued a [new interim final rule](#) implementing PPP Flexibility Act reforms, including updates to the forgiveness covered period. Both applications allow borrowers to use the original eight-week covered period (for loans made before June 5) or an extended 24-week covered period authorized by the PPPFA.

Meanwhile, ICBA continues calling on [community bankers](#) and [small-business owners](#) to urge Treasury and SBA to enact additional reforms to simplify PPP loan forgiveness. In a [written statement](#) for Wednesday's House Small Business Committee hearing, ICBA continued its calls for reforms such as a presumption of compliance for loans of \$1 million or less.

Questions on submitting 1502 reports can be directed to SBA's Fiscal and Transfer Agent, Colson Services Corp., at info@colsonservices.com or 877-245-6159. Additional guidance and resources are available on [Treasury's PPP webpage](#) and ICBA's [COVID-19 resource center](#).

ICBA offers custom op-ed on serving small business

ICBA released a [customizable op-ed](#) that community bankers can use to share how they have rallied around small businesses during the COVID-19 pandemic and led the way on Paycheck Protection Program loans. The custom op-ed, which can be customized and distributed to local news, is available with other resources on ICBA's [Tell Your Story toolkit](#). Meanwhile, ICBA continues calling on [community bankers](#) and [small-business owners](#) to urge the Treasury Department and SBA to enact additional reforms to simplify PPP loan forgiveness.

OCC: Federal standards preempt new state, local requirements

The OCC said that while state and local governments have an important role to play in the country's COVID-19 response, banks are governed primarily by uniform federal standards. In a [bulletin on preemption](#), the OCC said it is concerned that the proliferation of competing requirements will conflict with banks' ability to operate effectively and efficiently.

FROM THE WHITE HOUSE

Deadline for Support: Small businesses must apply with a lender to be eligible for funding by June 30, 2020. SBA has approximately \$100 billion available for relief.

- State-by-State Data can be found [here](#).

Program Overview

- [Top-line Overview of PPP](#)
- [SBA Paycheck Protection Program Loan Report](#)

- [SBA Paycheck Protection Program Loan Report Round 2](#) – Updated 6/14
- [Summary of Paycheck Protection Program Round 2 Data](#) – Updated 6/16

FROM THE OCC

Bulletin | OCC 2020-62 June 17, 2020

[COVID-19 Relief Programs : Preemption](#)

TO: Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Summary

Federal, state, and local governments have taken many actions to respond to the economic disruption caused by the spread of COVID-19. While the Office of the Comptroller of the Currency (OCC) recognizes that a wide range of stakeholders, including state and local governments, have an important role to play in the country's COVID-19 response, the agency reminds stakeholders that banks¹ are governed primarily by uniform federal standards.

Note for Community Banks

This bulletin applies to community banks.

Highlights

- Many state and local authorities have taken, or are considering taking, legislative, executive, or other action to respond to the economic disruptions caused by the spread of COVID-19.
- While the specifics of each state or local action vary, many address foreclosure and repossession moratoriums, loan forbearance, and limitations on the interest and fees banks may charge. These actions may also require banks to report related information to state or local officials and include penalties for violations of these requirements.
- The OCC recognizes the importance of prudent and proactive efforts to assist individuals affected by the COVID-19 emergency and has strongly encouraged banks to work with affected customers. As the OCC has noted, prudent arrangements can ease cash flow pressures on affected borrowers, improve their capacity to service debt, increase the potential for financially stressed residential borrowers to keep their homes, and facilitate banks' ability to collect on their loans.²
- Congress also recognized the importance of these efforts by including specific provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act to address forbearance on federally backed mortgage loans and moratoriums on related foreclosures.³ These provisions strike a careful balance between helping affected borrowers in the short term and preserving credit availability and affordability for other borrowers that would be curtailed by indefinite measures that impair banks' security interests.
- While these state and local actions are well-intended, the OCC is concerned that the proliferation of a multitude of competing requirements will conflict with banks' ability to operate effectively and efficiently, potentially increasing the risk to banks' safety and soundness and ultimately harming consumers.
- In light of this concern, the OCC reminds stakeholders that banks are governed primarily by uniform federal standards and generally are not subject to state law limitations.
- Federal preemption derives from the Supremacy Clause of the U.S. Constitution. It permits banks, many of which operate across state lines, to achieve efficiencies associated with operating under a uniform set of rules. As the Supreme Court has noted, federal legislation and regulation "has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States."⁴
- Therefore, federal law preempts state and local laws that impermissibly conflict with banks' exercise of federally authorized powers under the standard set forth in *Barnett Bank of Marion*

*County, N.A. v. Nelson.*⁵ Consistent with this standard, OCC regulations provide examples of the types of state laws that do not apply to banks' lending and deposit-taking activities.⁶ These include state law limitations on: terms of credit, such as the schedule for repayment and interest, amortization of loans, balance, payments due, minimum payments, and term to maturity; disbursements and repayments; and processing, origination, and servicing mortgages.⁷ OCC regulations also address interest and non-interest fees.⁸

- OCC regulations preempt state laws that conflict with the real estate lending powers of banks and specifically preempt state laws that interfere with banks' ability to make mortgage loans secured by real estate.⁹ State action that limits banks' ability to foreclose on a defaulted loan and take possession of collateral, beyond what is provided for in the CARES Act, would interfere with banks' powers to make secured mortgage loans.¹⁰
- In addition, as provided by statute, set forth in OCC regulations, and recently reiterated in OCC Bulletin 2020-43, the OCC has exclusive visitorial authority with respect to banks.¹¹ Requirements to report to state and local officials generally run afoul of this exclusive authority.
- Because each state or local action presents unique considerations, the OCC recommends that banks consult with counsel to determine the applicability of any particular state or local law. Banks and their counsel may also contact the OCC with questions.

Consistent with these principles of federal preemption, the OCC encourages states and localities to expressly exempt federally chartered banks from their laws and invites states and localities to reach out to the OCC with any concerns.

Further Information

Please contact Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, at (202) 649-5490.

FROM NEW YORK

Support For Tax Hike On Wealthiest New Yorkers

99 Democratic members of the New York State Legislature (from both the Senate and Assembly) issued a statement calling for a tax increase on New York's richest residents in order to shore up a budget battered by the coronavirus pandemic. [The statement](#), supported by a range of politically key labor unions and progressive organizations, calls for tax increases to offset the revenue losses in order to avoid deep spending cuts to areas like health care and schools. Governor Andrew Cuomo has so far resisted backing tax increases on upper income New Yorkers. His budget office has estimated the pandemic has created a combined multi-year budget gap of more than \$60 billion. The Governor and Legislature are hoping that federal assistance will be coming in the next relief package. Tax revenue is likely to pick up in July, when the deadline to file taxes was pushed back and the state could have a clearer picture then on its finances for the fiscal year.

"Cuomo Coronavirus Show" Will Wrap Up Tomorrow

Governor Cuomo will hold his final daily coronavirus briefing this Friday – ending [a 97-day streak](#) of press conferences. “We’ll do briefings as necessary,” Cuomo told reporters at a Wednesday press conference in Albany. “And I’m sure they will often be necessary, but we’re going to turn the page on the immediacy of this 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 (Steve@ibanys.net)**