

Tuesday, December 29, 2020

To: New York Community Banks

Over the past two days, major developments took place in Washington and Albany related to the pandemic and the related financial situation that will directly impact New York community banks and those we serve. We are sharing these important updates with you to help ensure that you are kept fully informed as to what has been happening at the both state and federal levels as 2020 draws to a close.

On behalf of all of us at IBANYS, we wish you a Happy, Safe, Healthy New Year!

-- John

**I. In a rare special lame-duck session, the New York State Legislature passed S.9114 (Kavanagh)/A.11181 (Dinowitz) -- "The COVID-19 Emergency Eviction and Foreclosure Prevention Act" --** which was officially introduced on Christmas Eve. **We have attached the bill** for your convenience. **Governor Cuomo signed the legislation**, calling it one of the nation's most comprehensive measures to prevent people from being removed from their homes during the pandemic. [Newsday reports.](#)

- **The legislation stays foreclosure protections until May 1, 2021** based on a hardship declaration for mortgagors with 10 or fewer dwelling units and includes the primary of the person requesting the relief with units for rental. It prohibits banks from credit discrimination based on owner grant of foreclosure stay and prohibits negative reporting to any credit reporting agency, and automatically renews certain homeowner benefits for seniors and disabled people.
- **IBANYS submitted our opposition to this legislation (the only financial services trade association to do so)**, and specifically addressed each of the objectionable provisions in detail. In summary, we noted: "Community banks have worked diligently and successfully to enter into forbearance agreements with their mortgagees. Banks have worked with their mortgagees to prevent foreclosures as directed by the Department of Financial Services. The Governor through Executive Order has imposed a moratorium on foreclosures on commercial mortgages for non-payment due to Covid-19 related financial hardship. . . There is no valid public policy reason to implement this statute since under the current law, the moratorium protects mortgagors and the Governor has expressed no reservations in terms of continuing the extension of the moratorium."
- The legislation also **provides residential eviction protection through May 1, 2021 based on a hardship declaration by the tenant.** The bill allows tenants to submit the form to their landlord or to court to prevent an eviction from being filed, or to suspend an eviction that's already underway. They'll get at least two months to fill out the form. The legislation builds on the state's "Tenant Safe Harbor Act" passed over the summer, which allowed tenants facing financial hardship to avoid eviction but still required them to show up in court if a landlord wants them out.

*For more details, see the following press coverage:*

- [https://www.cityandstateny.com/articles/policy/housing/push-new-tenant-protections-gains-traction-albany.html?mc\\_cid=2d3f648861&mc\\_eid=e3bcc3de68](https://www.cityandstateny.com/articles/policy/housing/push-new-tenant-protections-gains-traction-albany.html?mc_cid=2d3f648861&mc_eid=e3bcc3de68)
- [https://twitter.com/ZachReports/status/1342951476386279430?s=20&mc\\_cid=2d3f648861&mc\\_eid=e3bcc3de68](https://twitter.com/ZachReports/status/1342951476386279430?s=20&mc_cid=2d3f648861&mc_eid=e3bcc3de68)

**II. On Sunday night, President Trump relented and signed the \$900 billion-plus coronavirus stimulus package along with a \$1.4 trillion annual spending bill passed by Congress last week**, avoiding a government shutdown before a Monday night deadline. The House yesterday voted to meet the president's demand to increase the \$600 stipends to \$2,000 (The vast majority of House Republicans

voted against the Trump-inspired proposal for \$2,000 direct payments — 130 Republicans voted against it, just 44 Republicans voted in favor, while Democrats voted nearly unanimously in favor). . .but its future in the Senate is problematic as Republicans, including Majority Leader McConnell, have shown little interest in boosting spending. [Politico reports](#). . . . [The Washington Post reports](#). . . .  
[.https://www.newsweek.com/2000-stimulus-checks-will-pass-senate-tuesday-unless-gop-blocks-it-schumer-says-1557637](https://www.newsweek.com/2000-stimulus-checks-will-pass-senate-tuesday-unless-gop-blocks-it-schumer-says-1557637)

**Here is an update we shared last week when the legislation was passed.** [https://www.icba.org/newsroom/news-and-articles/2020/12/21/community-bank-provisions-of-bipartisan-bicameral-stimulus-package?utm\\_campaign=NewsWatch%20Today&utm\\_medium=email&\\_hsmt=103937459&\\_hsenc=p2ANqtz-91yvLSV3dUIQLFUhmhRXHr8KJQmxDBGMaadQJRmmN6DdEYCRARJg1PhezHOzy5qxW1drvfeSz2D-AEbAhSiJY6B-IAsA&utm\\_content=103938148&utm\\_source=hs\\_email](https://www.icba.org/newsroom/news-and-articles/2020/12/21/community-bank-provisions-of-bipartisan-bicameral-stimulus-package?utm_campaign=NewsWatch%20Today&utm_medium=email&_hsmt=103937459&_hsenc=p2ANqtz-91yvLSV3dUIQLFUhmhRXHr8KJQmxDBGMaadQJRmmN6DdEYCRARJg1PhezHOzy5qxW1drvfeSz2D-AEbAhSiJY6B-IAsA&utm_content=103938148&utm_source=hs_email)

**Here is the summary of the changes (mostly positive) in the stimulus package for community banks we provided last week** when the bill was passed, before the President suggested he might not sign it.

"This list includes PPP-related items as well.

- **TDR Relief Extended** – Allowing banks to suspend the Generally Accepted Accounting Principles for recognizing any potential COVID-related losses from a troubled debt restructuring to the earlier of 60 days after the national emergency termination date or January 1, 2022.
- **CECL Implementation Delayed, Too** – Adoption is now suspended until the first day of the fiscal year, which begins after the national emergency termination date or January 1, 2022.
- **Simplified Forgiveness Coming for PPP Borrowers Less Than \$150,000** – This will include one page of certifications, several estimations of how the money was spent and a report on retained employees. Perhaps the best part is that borrowers will not have to submit documentation with the forgiveness application, relieving the lender from responsibility to verify documentation before forgiveness is filed. The SBA has 24 days to establish the one-page forgiveness application.
- **EIDL Fix** – The bill fixes the vexing situation in which borrowers were having the EIDL advance amount deducted from their PPP forgiveness amount. This would be retroactive for any borrowers who have already received forgiveness.
- **Deductibility of Expenses** – Borrowers will be able to reduce from their taxable income in 2020 any expenses that were offset with a PPP loan.
- **Hold Harmless Provision** – PPP lenders received new hold harmless protection from enforcement actions and penalties relating to loan origination or forgiveness, provided they acted in good faith and satisfied other legal and regulatory requirements to which they are subject.
- **501(c)6 Organizations Now Eligible** – Corporations organized as tax-exempt under section 501(c)6 of the Internal Revenue Code and that do not conduct lobbying activity to exceed 15% of their total activity are now eligible to receive a PPP loan. This will cover many civic organizations in your community, including local chambers of commerce.
- **Lender Fees More Generous Than Previously Reported** – For loans up to \$50,000, the lender processing fee will be the lesser of 50 percent of the principal amount, or \$2,500. For loans between \$50,000 and \$350,000, the lender fee will be five percent. For loans \$350,000 and above, the lender fee will be three percent.
- **Special Bankruptcy Implications** – Establishes a special procedure in the bankruptcy process if the Administrator determines certain small business debtors are eligible for PPP loans. It requires court approval for PPP loans to these debtors and requires any such loan be given a super-priority claim in the bankruptcy process, providing additional protection to taxpayers and participating banks. The provisions in this section would take effect only upon a written determination by the Administrator that certain small business debtors are eligible for PPP loans and would sunset two years from the date of enactment.
- **Continued Funding for 7(a) Program** – Separates PPP from the 7(a) loans and authorizes \$75 billion for the regular 7(a) loan program.
- **Support for 7(a), 504 and Microloan Programs Resumes** – Borrowers will receive an additional three months of principal and interest payments, starting in February 2021. Future

payments are capped at \$9,000 per borrower, per month. The borrowers of the smallest amounts will be eligible to receive an additional five months of P&I support.

- **Extension of Credits for Paid Sick and Family Leave** – The refundable payroll tax credits enacted in the Families First Coronavirus Response Act are extended through the end of March 2021. However, it does not extend the employer mandate. This credit is available if a business were closed (which banks were not) or their gross income was reduced by 50%.
- **Emergency Income Payments** – These are less generous than the original payments at \$600 per eligible family member. The credit phases out starting at \$75K of modified adjusted gross income. These payments are not subject to set off for federal taxes or garnishment or levy by debt collectors. We doubt that Treasury has improved its payment systems, so we should be prepared for ACH glitches.
- **Tenant Issues** – Emergency rental assistance is authorized to eligible households, provided through grants. At the same time, eviction moratorium is extended through January 31, 2021.
- **Agent fees** – Clarifies that any fees due to an agent providing assistance to a borrower are the responsibility of the borrower and not the lender unless the lender directly contracts with the agent.

Please contact IBANYS with any additional questions.

### **III. ICBA issued the following notice this morning regarding the distribution of Economic Impact Statements (EIPs):**

"Following this week's signing of the economic stimulus package into law, the federal government released information on the distribution of Economic Impact Payments to individuals and families. Here's what we know now:

- The Treasury Department [issued ACH details](#) on the direct payments and said financial institutions should be prepared to begin receiving EIPs with a new company entry description, effective immediately.
- Treasury and the Fed are hosting an ["Ask the Fed" webinar](#) at 2 p.m. (Eastern time) tomorrow, Dec. 30, on what bankers need to know about the EIPs.
- ICBA is continually updating its [frequently asked questions](#) on the EIPs with the latest information as it becomes available and separately offers a [summary](#) of the community bank provisions of the stimulus package.

The swift distribution of these direct payments—which must be processed by Jan. 15—requires community bankers to ensure sufficient cash on hand and staff support to handle customer inquiries and payment exception processing.

With the government expected to release additional information on the EIPs in the coming days, ICBA will continue updating its FAQs with the very latest on these stimulus payments.

[Access ICBA's FAQs](#)

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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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