NBA Nebraska Bankers Association

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Update

COMPLIANCE

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REVISIONS TO SBA PAYCHECK PROTECTION PROGRAM

I. HIGHLIGHTS OF REVISIONS

The Small Business Administration (SBA) has issued an interim final rule that provides additional implementation guidelines and requirements for its Paycheck Protection Program (PPP), including raising the fixed interest rate on loans made under the program from 0.5% to 1%.

The new rule provides greater clarity by specifying underwriting expectations, which are limited to the application form and the certifications in it, the borrower's payroll documentation and applicable Bank Secrecy Act requirements. Lenders may rely on borrower documentation for loan forgiveness, providing greater protection for lenders should borrowers misrepresent information in their application. The rule indicates that the lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs.

After seven weeks, lenders may request that SBA purchase the expected forgiveness amount of PPP loans; these requests may be submitted in advance, and SBA will purchase the expected forgiveness amount of the loan within 15 days after it receives a complete report.

Banks already certified as 7(a) lenders may begin approving loan applications with SBA delegated authority on April 3. Banks not currently in troubled condition will be "automatically qualified" to make loans with delegated authority once they submit SBA Form 3506, along with the official application form and the form lenders must submit to receive the 7(a) guaranty.

II. SPECIFIC PAYCHECK PROTECTION PROGRAM REVISIONS

While many of the provisions of the PPP Guidance issued earlier this week (See NBA Compliance Update Vol. XXXVII, No. 17) remain in place, additional detail regarding the most recent revisions is set forth below:

A. Interest Rate

The interest rate on the PPP loan will be 100 basis points or 1 percent. The initial guidance indicated that the interest rate would be set at .5 percent.

B. Loan Maturity

The maturity for PPP Loans is two years. While the Act provides that a loan may have a maximum of up to 10 years from the date the borrower applies for loan forgiveness, the Administrator determined that a two-year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus.

C. Use of E-Signatures or E-Consents

E-signatures or e-consents can be used for borrowers with multiple owners, regardless of the number of owners.

D. Loan Deferment

Payments on a PPP Loan are deferred for six months following the date of disbursement of the loan; however, interest will continue to accrue during this six-month deferment.

E. Loan Forgiveness

Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.

F. Submitting Applications

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation. (payroll processor records, payroll tax filings, or Form 1099- MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.) The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

G. Use of PPP Loans

The interim final rule clarifies that, in addition to other uses previously authorized, the proceeds of a PPP Loan may be used for refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. A borrower who received an SBA EIDL loan from January 31, 2020 through April 3, 2020 can apply for a PPP loan. If the EIDL loan was not used for payroll costs, it does not affect the borrower's eligibility for a PPP loan. If the EIDL loan was used for payroll costs, the PPP loan must be used to refinance the EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

H. Misuse of PPP Loan Funds

If PPP funds are used for unauthorized purposes, SBA will direct the borrower to repay those amounts. If the funds are knowingly used for unauthorized purposes, the borrower will be subject to additional liability such as charges for fraud. If shareholders, members, or partners of the borrower use PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

I. Borrower Certifications

The interim final rule establishes borrower certifications, in addition to those previously required, as follows:

> i. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.
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> ii. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities.
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> iii. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
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> iv. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.
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> v. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

J Eligible Lenders

All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis. In addition, authority to make PPP Loans will be extended to lenders which have the necessary qualifications to process, close, disburse, and services loans made with the SBA guarantee, including any federally insured depository institution, unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action with their primary federal regulator that addresses unsafe or unsound lending practices.

Federally insured depository institutions which are not currently SBA 7(a) lenders, unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices, will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506).

K. Loan Underwriting

Each lender shall:

1. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;
2. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
3. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and
4. Follow applicable BSA requirements:
    a. Federally insured depository institutions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP. PPP loans for existing customers will not require reverification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

L. Lender Reliance of Borrower Documentation for Loan Forgiveness

The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower.

M. "Credit Elsewhere Test" Not Required

When evaluating an applicant's eligibility lenders will not be required to apply the "credit elsewhere test."

N. SBA Advance Purchase of Some or All of The PPP Loan

A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight-week period after loan disbursement. (At least 75 percent of the expected forgiveness amount shall be for payroll costs)

To submit a PPP loan or pool of PPP loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report shall include: the Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application; the Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation; a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable.

NOTE: *The SBA revisions to the Paycheck Protection Program must be read in concert with the provisions of the initial guidance which have not been modified, such as the processing fees SBA will pay to lenders, SBAs 100 percent guarantee of PPP Loans, and the eligibility of PPP Loans to be sold into the secondary market.*