Compliance Bulletin 20-07

U.S. Small Business Administration Releases Interim Final Rule for Paycheck Protection Program

Late on the afternoon of Thursday April 2, 2020, the U.S. Small Business Administration (SBA) released an interim final rule to provide guidance for the Paycheck Protection Program (PPP) loans that were created by Section 1102 and Section 1106 of the CARES Act.

While the guidance is helpful, it does not necessarily answer all the questions that credit unions may have regarding the program.

Which credit unions can participate and when?

All credit unions who are currently SBA 7(a) approved lenders are automatically approved to make PPP loans on a delegated basis. New lenders will have the authority to provide PPP loans upon submission of their application, which is detailed below.

What exactly is delegated authority?

The Paycheck Protection Program provides for the delegation of authority. This is the ability for lenders to make determinations on a borrower's eligibility and creditworthiness without going through all the SBA's channels. This delegation of authority is extended to all current 7(a) lenders who make these loans to small businesses and will provide the same authority to lenders who join the program to make these loans.

The delegated authority streamlines the requirements of the regular 7(a) loan program. Loans made under the PPP will not require that the lenders comply with section 120.150, but instead the lender may rely on certifications from borrowers in order to determine eligibility of the borrower and use of loan proceeds, and to rely on specified documents provided by the borrower to determine the qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in the interim final rule.

What borrowers are eligible for the PPP loans, and who is ineligible?

Those eligible for the Paycheck Protection loans include:

- Small businesses with 500 or fewer employees;
- 501(c)(3) Nonprofit organizations with 500 or fewer employees;
- 501(c)(19) Veterans organizations with 500 or fewer employees;
- Tribal business concerns with 500 or fewer employees;
- Sole proprietors;
- Independent contractors; and
- Self-employed individuals

The interim final rule also provides information on those who would be ineligible for a PPP loan, including:

- Those engaged in any activity that is illegal under federal, state, or local law (marijuana related businesses are still illegal under federal law);
- Those who are household employers (individuals who employee household employees such as nannies or housekeepers);
- An owner of 20% or more of the equity of the applicant who is incarcerated, on probation, on parole, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdictions, or has been convicted of a felony within the last five years; or
- Anyone or any business owned or controlled by that person or any of the business owners that has every obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

In addition, with the exception of nonprofit organizations authorized under the CARES Act, businesses identified in 13 CFR 120.110 are not eligible for PPP loans.

What can the PPP loan be used for?

In general, the Paycheck Protection loans may be used for:

- Payroll costs;

- Costs related to the continuation of group health care benefits, paid sick leave, paid family or medical leave, and insurance premiums;
- Employee salaries, commissions, or similar compensation;
- Payments of interest on any mortgage obligation, provided that it does not include any prepayment of or payment of principal on the mortgage obligation;
- Rent or lease payments;
- Utilities;
- Interest on any debt obligation incurred before the covered period and/or
- Refinancing an SBA Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 with certain conditions. If the EIDL loan was not used for payroll costs, it does not affect the 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.

However, at least 75% of the PPP loan proceeds must be used for payroll costs.

What does a borrower need to bring to apply?

Applicants will need to submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship.

For applicants that do not have such documentation, the applicant must provide other supporting documentation, such as bank records sufficient to demonstrate the qualifying payroll account.

What is the maximum loan amount?

The Interim final rule provides good examples of calculating the maximum loan amount:

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

Step 1: Aggregate payroll costs from the last twelve months for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year.

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

The Interim Final Rule provides a few examples:

Example 1 – No employees make more than $100,000

- Annual payroll: $120,000
- Average monthly payroll: $10,000
- Multiply by 2.5 = $25,000
- Maximum loan amount is $25,000

Example 2 – Some employees make more than $100,000

- Annual payroll: $1,500,000
- Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
- Average monthly qualifying payroll: $100,000
- Multiply by 2.5 = $250,000
- Maximum loan amount is $250,000

Example 3 – No employees make more than $100,000, outstanding EIDL loan of $10,000.

- Annual payroll: $120,000
- Average monthly payroll: $10,000
- Multiply by 2.5 = $25,000
- Add EIDL loan of $10,000 = $35,000
- Maximum loan amount is $35,000

Example 4 – Some employees make more than $100,000, outstanding EIDL loan of $10,000

- Annual payroll: $1,500,000
- Subtract compensation amounts in excess of an annual salary of $100,000: $1,200,000
- Average monthly qualifying payroll: $100,000
- Multiply by 2.5 = $250,000
- Add EIDL loan of $10,000 = $260,000

- Maximum loan amount is $260,000

What are the terms that can be applied to the loan?

The Interim Final Rule changes the loan terms that can be applied to a PPP loan from what was in Section 1102 of the CARES Act. Per the Interim Final Rule:

- The interest rate on a PPP loan will be 100 basis points, or 1% APR; and
- The maximum maturity of these loans is 2 years.

In addition, the PPP loans make certain changes to the normal 7(a) requirements including:

- The guarantee percentage is 100 percent.
- No collateral or personal guarantee will be required.
- The interest rate will be 100 basis points or one percent.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.
- There will be no up-front guarantee fee payable to SBA by the borrower.
- There will be no lender’s annual service fee (“on-going guaranty fee”) payable to SBA.
- There will be no subsidy recoupment fee.
- There will be no fee payable to SBA for any guarantee sold into the secondary market.
- Agent fees will be paid by the lender out of the fees the lender receives from SBA.
- A PPP loan may be sold on the secondary market after the loan is fully disbursed.

How do we underwrite the loans?

The interim final rule creates a streamlined underwriting process for lenders. Lenders will need to:

- Confirm receipt of borrower certifications which are contained in SBA Form 2483 (Paycheck Protection Program Application Form);
- 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;
- 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
- Follow applicable Bank Secrecy Act requirements.

How and what do we submit to the SBA to guaranty a loan we just made?

Lenders will need to submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain both the SBA Form 2484 and SBA Form 2482 (Paycheck Protection Program Application From) in its

At the time this bulletin was written, no details on the electronic submission of form 2484 were available. More details in accessing the SBA E-Tran system are needed.

What are the loan deferment provisions?

The PPP has provisions for loan deferment for six months following the date of disbursement. Interest will continue to accrue on the PPP loans during the deferment. Under the CARES Act, the SBA has the authority to defer payments for up to 1 year, but currently has set the deferment period at six months.

How does loan forgiveness work, and how to we get the forgiveness back from the SBA?

The amount of forgiveness can be up to the full principal amount of the loan and accrued interest. Loan forgiveness will depend on various factors such as:

- The total amount of payroll costs;
- Payments of interest on mortgage obligations,
- Rent payments,
- Utility service payments

Forgiveness is for payments of those items over the 8-week period following the date of the loan, but not more than 25% of the loan forgiveness can be attributed to non-payroll costs.

Per the Interim Final Rule, credit unions do not need to conduct any verification if the borrower submits documentation supporting its requirements for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The CARES Act provides further clarification regarding the documentation that should be provided:

Each borrower seeking loan forgiveness must apply with the lender servicing the loan. The application will need to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for current year and prior year periods including: Payroll tax filings reported to the IRS; and State income, payroll, and unemployment insurance filings.

- Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- A certification from the representative who is authorized to make a certification on behalf of the business that: The documentation presented is true and correct; and the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- Any other documentation that the SBA determines as necessary.

The borrowers must submit the documentation since the CARES Act prohibits forgiveness without documentation.

Credit unions may request the SBA purchase an expected forgiveness amount of a PPP loan or a pool of PPP loans at the end of week seven of the covered period. To submit a PPP loan or pool of PPP loans for advance purchase, the credit union will need to submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report needs to include:

- SBA Form 2483 (Paycheck Protection Program Application Form) and any supporting documentation submitted with the original application;
- SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) and any supporting documentation;
- A detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis of 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 SBA may require to determine whether the expected forgiveness amount is reasonable.

The SBA will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date that the SBA receives a complete report from the credit union.

If the funds are misused, is the credit union liable?

Lenders must comply with the applicable lender obligations set forth in this interim final rule but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule.

For the borrower, the SBA will direct them to repay any amounts that were used for unauthorized purposes. If the borrower knowingly uses the funds for unauthorized purposes, they will be subject to additional liability such as charges for fraud.

Do PPP loans count against our MBL cap?

No. The PPP loans are 100% guaranteed by the SBA. Any portion of a loan guaranteed by the SBA does not count towards your MBL cap.

What are we going to get for making these loans?

The SBA will pay lenders fees for processing PPP loans in the following amounts:

- 5% for loans of not more than $350,000;
- 3% for loans of more than $350,000 and less than $2,000,000; and
- 1% for loans of at least $2,000,000.

Lenders that use agents who assist borrowers will need to pay their agents out of the fees that the lender receives from the SBA. The agents may not collect any fees from the borrowers. The fees paid to the agents are capped at:

- 1% for loans of not more than $350,000;
- 0.50% for loans of more than $350,000 and less than $2,000,000; and
- 0.25% for loans of at least $2,000,000.

We are currently not an SBA approved lender; how do we get on the program?

According to the Interim Final rule any federally insured credit union will automatically qualify under delegate authority by the SBA upon transmission of SBA Form 3506 (CARES Act Section 1102 Lender Agreement). This does not apply to credit unions that are currently 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.

Which leads to the question of how to transmit SBA Form 3506? While the Interim Final rule does not address this question, the PPP Lender Information Sheet states:

“A broad set of additional lenders can begin making loans as soon as they are approved and enrolled in the program. New lenders will need to submit their application to DelegatedAuthority@sba.gov to apply with the SBA.”

* At the time this bulletin was sent, SBA Form 3506 was not available online. Credit unions should check the Treasury CARES Act website to confirm if the form became available after this bulletin was sent.

Is the PPP program first come, first serve?

Yes. The funds appropriated for the PPP loans was $349,000,000.

What resources are available for the PPP loans?

Treasury CARES Act website

Paycheck Protection Program – Interim Final Rule

SBA Form 2483 (Paycheck Protection Program Application Form)

SBA Form 2484 (Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty)

SBA Form 3506 (CARES Act Section 1102 Lender Agreement) * At the time this bulletin was sent, SBA Form 3506 was not available online. Credit unions should check the Treasury CARES Act website to confirm if the form became available after this bulletin was sent.

PPP Information Sheet for Lenders

Who at the SBA should I be directing questions to?

Questions on the PPP loans can be directed to the Lender Relations Specialist in the local SBA Field Office. The local Office may be found at https://www.sba.gov/tools/local-assistance/districtoffices

When is the interim final rule effective?

The rule became effective immediately.

How long with the interim final rule be in effect?

The interim final rule applies to applications submitted under the PPP through June 30, 2020, or until funds available for the purpose are exhausted.

If you have any questions about the SBA Paycheck Protection Program loans, please contact the Compliance Department at 800.546.4465, or compliance@nwcua.org

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