

## **SBA Releases Guidance Regarding SBA Loan Review Procedures and Responsibilities of Borrowers and Lenders**

On May 22, 2020, the SBA posted an interim final rule which addresses SBA's reviews of individual PPP loans, processes and timelines for dispositions of PPP loan forgiveness applications, and lender fees.

### ***SBA Process for Review of PPP Loans***

The SBA has clarified that it will review whether a borrower is eligible for the PPP loan based on the text of the CARES Act, the rules and guidance available at the time of the loan application, the terms of the borrower's loan, and the terms of the borrower's loan application. The SBA has stated that it may review any PPP loan and, in particular, will focus on borrower's eligibility, the loan amounts and use of loan proceeds, and loan forgiveness amounts. The SBA may undertake this review at any time and borrowers should be reminded that they are to retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full.

Similarly, lenders must comply with the applicable requirements for record retention which, for federally regulated lenders, means compliance with the requirements of their federal financial institution regulator. If the SBA elects to review a PPP loan, the SBA will require the lender to contact the borrower in writing to request additional information, and may also request information directly from the borrower. Failure to respond to an inquiry from the SBA may result in the determination that the borrower is ineligible for a PPP loan. If a borrower is found to be ineligible for a PPP loan, that borrower may not obtain PPP loan forgiveness. The SBA has indicated that a separate forthcoming guidance will address appeals of a determination that a borrower is ineligible for a PPP loan.

The SBA's guidance also includes information regarding the loan forgiveness process for lenders. For all PPP loan forgiveness applications, each lender shall:

- Confirm the receipt of the borrower's certifications contained in the loan forgiveness application form;
- Confirm receipt of the documentation borrowers must submit to verifying payroll and non-payroll costs;
- Confirm that borrower's calculations on the borrower's loan forgiveness application with respect to certain matters; and
- Confirm that the borrower made the calculation on line 10 with respect to the 75% rule correctly.

### ***Lender Standards of Review of PPP Loan Forgiveness Application***

The SBA has stated that lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. The SBA gives the example of minimal review of calculations based on a payroll report by a recognized third party payroll processor as being appropriate. However, by contrast, if payroll costs are not documented with payroll reports by a recognized third party payroll processor, more extensive review of calculations and data would be appropriate. The SBA also reiterated that a lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request, the loan forgiveness and attest that it accurately verified the payments for eligible costs.

## ***PPP Loan Forgiveness Process and Timelines***

Under the CARES Act, the lender must issue a decision to the SBA on a loan forgiveness application not later than 60 days after receipt of a completed loan forgiveness application from the borrower. Lenders may approve, deny, or deny without prejudice, allowing for the borrower to request that the lender reconsider the loan forgiveness application.

In the event that the lender determines that the borrower is entitled to forgiveness, it must request payment from the SBA at the time it issues its decision to the SBA. The SBA will, subject to any SBA review, remit the appropriate forgiveness amount to the lender plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to the SBA. If the lender decides that the borrower is not entitled to forgiveness in any amount, it must provide the SBA with the reason for its denial, along with certain documentation. The lender must also notify the borrower in writing of its decision. Within 30 days of notice from the lender, a borrower may request an SBA review of the lender's decision. The SBA may also begin an independent review of any PPP loan of any size in its discretion. If it does so, the SBA will notify the lender, and the lender must notify the borrower of such in writing within five business days of receipt of notice from the SBA.

## ***Lender Fees: Clawback and Other Issues***

The SBA also addressed issues associated with lender fees. If the SBA conducts a loan review and determines that the borrower was ineligible for a PPP loan, the lender is not eligible for a processing fee. The SBA has also provided for a clawback period. For any SBA reviewed PPP loan, if within one year after the loan was disbursed and the SBA determines that a borrower was ineligible, the SBA will seek repayment of the lender processing fee from the lender.

However, the SBA's determination of the borrower eligibility will have no effect on its guarantee of the loan if the lender has complied with its other obligations enumerated under the [First Interim Final Rule](#). If the lender has not fulfilled its obligations under PPP regulations, including Section III.3.B of the first Interim Final Rule, or in accordance with the document collection and retention requirements (SBA Form 2484), the SBA will seek repayment of the lender processing fee from the lender and may determine that the loan is not eligible for a guarantee.

This Interim Final Rule is available [here](#).

## **Contact Us**

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