Summary of the Paycheck Protection Program Under the CARES Act

As of May 18, 2020, subject to updating to reflect clarifications and changes to the program.

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CARES Act: *Overview and Resources*

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- On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") (Pub. L. 116–136).
- On April 24, 2020, the President signed into law the Paycheck Protection Program and Health Care Enhancement Act (the "PPPHCE Act") (Pub. L. 116–139).
- Among other forms of economic aid, the CARES Act established the paycheck protection program ("PPP") as an expansion of the Small Business Administration's ("SBA") existing 7(a) loan program.
  - Section 1102 of the CARES Act temporarily permits the SBA to guarantee 100 percent of loans made under the PPP.
  - Section 1106 of the CARES Act further provides for loan forgiveness for up to the full principal amount of qualifying loans guaranteed under the PPP.
- The SBA has issued Interim Final Rules ("IFRs"), Information Sheets for borrowers and lenders, a Form of Note, and several forms and applications to implement and clarify the PPP. Links to the CARES Act, the PPPHCE Act, and IFRs, are provided below.

  - CARES Act
  - PPPHCE Act
  - IFR 1
  - IFR on Affiliation
  - IFR – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans
  - IFR – Requirements for Promissory Notes Authorizations Affiliation and Eligibility, as revised by IFR on Limited Safe Harbor
  - IFR – Additional Criterion for Seasonal Employers
  - IFR on Disbursements
  - IFR on Corporate Groups and Non-Bank and Non–Insured Depository Institution Lenders
  - IFR – Nondiscrimination and Additional Eligibility Criteria
  - IFR on Limited Safe Harbor
  - IFR on Loan Increases
  - IFR on Eligibility of Certain Electric Cooperatives
  - IFR on Treatment of Entities with Foreign Affiliates

CARES Act: *Overview and Resources*

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- The SBA has also issued FAQs (updated almost daily) and other guidance documents, linked below.
  - Frequently Asked Questions
  - Guidance: How to Calculate Loan Amounts
  - Guidance: Participation Sales
  - Guidance: Whole Loan Sales
- The SBA has also released required forms and applications, linked below.
  - Lender Application Form
  - Borrower Application Form
  - Loan Forgiveness Application and Instructions for Borrowers
- The Federal Reserve Board (the "Federal Reserve") issued an IFR regarding Regulation O and Loans to Executive Officers, Directors and Principal Shareholders of Member Banks, found here.
- The U.S. Department of Treasury also provided information for lenders and borrowers, linked below.
  - PPP Information Sheet: Lenders
  - PPP Information Sheet: Borrowers
- On April 16, the Federal Reserve announced that its Paycheck Protection Program Lending Facility ("PPPL Facility") is fully operational. Under the PPPL Facility, banks may pledge their PPP loans as collateral to a Federal Reserve Bank in return for term financing. A link to our summary of the PPPL Facility is available below.
  - Summary of U.S. Treasury and Federal Reserve Programs to Support the Economy

Paycheck Protection Program: *Overview*

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High-level Summary of Key Terms

- **Funding.** Congress appropriated $349 billion for loans under the PPP in the CARES Act. After available funds ran out on April 16, 2020, Congress appropriated an additional $310 billion to fund PPP loans in the PPPHCE Act. $60 billion of the new appropriation are set aside for certain small and midsize community lenders (as detailed in next slide).
- **Loan Amount.** The PPP permits loans to small businesses in an amount generally equal to 2.5 times the borrower's average monthly payroll costs (up to $10 million).
- **Deferral.** Principal and interest on PPP loans are deferred for six months (although interest will accrue).
- **Loan Forgiveness.** PPP loans may be forgiven up to the full principal amount and any accrued interest to the extent the borrower uses the loan proceeds for specified purposes during the eight weeks after loan disbursement and generally maintains employee and compensation levels.
- **Eligible Borrowers.** PPP loans are available only to businesses that meet certain criteria as described in slides below.
- **Eligible Lenders.** All SBA 7(a) lenders, federally insured depository institutions and other non-bank lenders are eligible to participate, as described below.
- **Funding Status.** By statute, PPP loans are available until June 30, 2020.
    - Following the passage of the PPPHCE, the SBA resumed accepting applications on April 27, 2020.

Paycheck Protection Program: *Additional Appropriations*

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PPPHCE Act:

- In response to a lack of available funding for the PPP, Congress passed the PPPHCE Act.
- The bill provides additional appropriations of $310 billion to fund PPP loans.
- The bill sets aside $60 billion for loans made by certain small and midsize community lenders, as follows:
  - $30 billion set aside for loans made by insured depository institutions and credit unions with consolidated assets of not less than $10 billion and not more then $50 billion.
  - $30 billion set aside for loans made by:
    - certain community financial institutions (including community development financial institutions, minority depository institutions, and development companies certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.)); and
    - insured depository institutions and credit unions with consolidated assets of less than $10 billion.

Paycheck Protection Program: *Borrower Eligibility*

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Eligible Borrowers	➢ "Small business concern" under existing SBA rules.
	➢ Businesses, certain tax-exempt organizations and Tribal business concerns that (i) have 500 or fewer employees or (ii) operate in certain industries and meet applicable SBA employee-based size standards for that industry.
	    ➢ For purposes of determining eligibility, headcount includes all employees and is not limited to full-time equivalent employees.
	    ➢ Student workers generally count as employees unless the applicant is an institution of higher education and the services are performed as part of a Federal Work-Study Program (or a substantially similar program of a State).
	➢ Businesses assigned a NAICS code beginning with 72 (accommodation and food service businesses) and with no more than 500 employees per physical location also are eligible.
	➢ Independent contractors.
	➢ Sole proprietorships.
	➢ Certain self-employed individuals.

Other Requirements	➢ In operation on February 15, 2020 (a change of ownership is not disqualifying). ➢ Have employees to whom the business paid salaries and payroll taxes or paid independent contractors. ➢ Evidenced by documentation such as payroll processor records, payroll tax filings, Form 1099-MISC or bank records.

Paycheck Protection Program: *Borrower Eligibility*

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Ineligible Borrowers

- Business types that are ineligible for SBA business loans under SBA rules, including but not limited to: certain financial businesses, certain passive businesses owned by developers and landlords, life insurance companies, certain businesses located in a foreign country, private clubs and businesses which limit the number of memberships for reasons other than capacity, and certain government-owned entities.
- Otherwise eligible borrowers that are disqualified include, for example:
    - Hedge fund and private equity firms;
    - Household employers (*e.g.*, individuals who employ nannies or housekeepers);
    - Businesses with a 20% or more owner that is a bad actor (*e.g.*, incarcerated, presently subject to formal criminal charges, or has been convicted of a felony within the last five years); and
    - Businesses that have 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.
- A borrower who (or whose owner) is a debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, is also ineligible. A borrower is obligated to notify the lender if bankruptcy proceedings commence after an application is submitted but before the loan is disbursed, and a failure to do so will be regarded as a use of PPP funds for unauthorized purposes.

Paycheck Protection Program: *Borrower Eligibility*

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Other Borrowers

- Hospitals that are otherwise eligible as a business concern or nonprofit organization are not rendered ineligible due to ownership by a state or local government so long as the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.
- Nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as "nonprofit organizations" eligible for PPP loans if the hospital reasonably determines, in a written record, that it is an organization described in section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under section 501(a).
- Businesses that are otherwise eligible are not rendered ineligible due to receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. Businesses that received illegal gaming revenue are categorically ineligible.
- Agricultural producers, farmers, and ranchers are eligible if they:
  - have 500 or fewer employees; or
  - fit within the revenue-based sized standard (average annual receipts of $1 million); or
  - meet SBA's "alternative size standard":
    - maximum net worth of not more than $15 million; and
    - average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of the application is not more than $5 million.
- As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.

Paycheck Protection Program: *Borrower Eligibility*

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Single Corporate Group Limitation

- Businesses, including those exempted from SBA's affiliation rules (see next slide), that are part of a single corporate group cannot receive more than $20 million of PPP loans in the aggregate.
  - Businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.
- It is the responsibility of an applicant to notify the lender if the applicant has applied for or received PPP loans in excess of $20 million and to withdraw or request cancellation of any pending PPP loan application or approved PPP loan not in compliance with this limitation.
  - Failure to do so will be regarded as a use of PPP funds for unauthorized purposes.
- This rule has no effect on lender obligations required to obtain an SBA guarantee, and a lender may rely on an applicant's representation regarding compliance with the single corporate group limitation.

Paycheck Protection Program: *Affiliation Rules*

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SBA's Affiliation Rules	➢ Determination of borrower eligibility is subject to the SBA's affiliation rules under 13 CFR § 121.301 unless specifically <u>waived</u> in the CARES Act.
	  ➢ Because of the affiliation rules, many companies owned by private companies will not qualify for PPP loans.
	  ➢ According to SBA FAQ 4, it is the borrower's responsibility to determine which entities are its affiliates.
	  ➢ Borrowers must count employees of U.S. and foreign affiliates in determining eligibility.
	➢ Any one of four circumstances may establish affiliation: (1) ownership of a majority of voting equity; (2) minority equity ownership with the ability to prevent a quorum or block board or shareholder action; (3) control of the management of one or more entities (including through a management agreement); and (4) an identity of interest between close relatives with identical or substantially identical business or economic interests.
	➢ For purposes of determining affiliation, stock options, convertible securities, and agreements to merge are treated as if they have been exercised (unless the ability to exercise is based on an "extremely remote" contingency).
	➢ Participation in an employee stock ownership plan ("ESOP") does not trigger application of the affiliation rules as between the business and the ESOP.

Exceptions for Hotels and Restaurants, Franchisees and Certain Faith-Based Organizations	➢ The CARES Act includes statutory waivers from the affiliation rules for:
	  1. Any business assigned a NAICS code beginning with 72 (accommodation and food service businesses) and with no more than 500 employees;
	  2. Any business operating as a franchise that is assigned a franchise identifier code by the SBA; and
	  3. Any business that receives financial assistance from a licensed Small Business Investment Company.
	➢ The SBA exempts certain faith-based organizations pursuant to its IFR on Affiliation.

Paycheck Protection Program: *Employee Retention Credit*

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Implications for PPP Recipients

- An employer cannot receive the Employee Retention Credit, a tax credit created under the CARES Act, if the employer receives a PPP loan. An employer that repays its PPP loan pursuant to the safe harbor (by May 18, 2020) is still eligible (see slide 15).
  - The Employee Retention Credit is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that employers pay their employees.
  - The Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an eligible employer for qualified wages paid to any employee is $5,000.
  - To qualify for the Employee Retention Credit, companies must be subject to a government mandated suspension of operations or experience a decrease in revenue of 50% or more compared to the same calendar quarter in the prior year.
  - For companies with more than 100 employees, employee must not be providing services. It is not clear whether this means an employee cannot provide any services or whether the credit only applies to wages paid in excess of wages attributable to the employee's actual services (*i.e.*, if employee is operating at 20%, 80% of wages would be available for the credit). Some language in the Senate and IRS FAQs suggest the latter interpretation.
- The Employee Retention Credit rules have their own affiliation rules that treat commonly–controlled employers as a single employer.

> In the case of a private equity fund with majority owned portfolio companies, if one portfolio company receives a PPP loan (because it qualifies for an exception from the PPP loan affiliation rules), it is possible that none of the other portfolio companies would qualify for the Employee Retention Credit.

Paycheck Protection Program: *Terms and Conditions*

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Maximum Loan Amount	The lesser of $10 million and 2.5 times average monthly payroll costs. ➢ Includes 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"). ➢ For purposes of determining its maximum loan amount, a seasonal employer can elect to use any consecutive 12-week period between May 1, 2019 and September 15, 2019 to calculate its average monthly payroll costs. ➢ If a seasonal employer received a PPP loan before this alternative criterion was posted (April 28, 2020), and would be eligible for a higher maximum loan amount under the alternative criterion, the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount, even if the loan has been fully disbursed, provided that the lender's first SBA Form 1502 report to the SBA on the PPP loan has not been submitted (or was required to be submitted).
Interest Rate	1%
Payments	Deferred for six months (but interest will accrue over this period)
Maturity	2 years
Guarantee	➢ 100% guaranteed by the SBA ➢ No collateral or personal guarantees by the borrower are required
Fees	Lender Fees: ➢ <u>5%</u> for loans up to $350,000, <u>3%</u> for loans of more than $350,000 and less than $2 million, and <u>1%</u> for loans of at least $2 million ➢ Paid by the SBA Borrower Fees: No annual service fee, subsidy recoupment fee or up-front guarantee fee
Other terms	➢ "First come, first served" basis ➢ Only one PPP loan per borrower

Paycheck Protection Program: *Borrower Attestations*

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Borrower must certify:

- The borrower was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099–MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, and the borrower understands it may be held legally liable if the funds are knowingly used for unauthorized purposes, such as charges of fraud.
- 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.
- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments and covered utilities, with not more than 25 percent of the forgiven amount for non-payroll costs.
- 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.
- Certain certifications that the information provided is true and accurate in all material respects and acknowledging potential for criminal liability.

Paycheck Protection Program: *Borrower Attestations*

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Necessity of the Loan Certification:

- On April 23, 2020, the SBA issued FAQ 31, clarifying that:
  - All borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
  - Borrowers must make this certification in good faith, "taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."
  - "It is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification."
- On April 24, 2020, the SBA issued an IFR providing a limited safe harbor, and on May 8, 2020, the SBA issued another IFR extending the deadline for the safe harbor.
  - Under the safe harbor, any borrower that applied for a PPP loan prior to April 28, 2020 and repaid the loan in full by May 18, 2020 will be deemed to have made the required certification in good faith.
- On April 28, 2020, the SBA issued FAQ 37, clarifying that the considerations outlined in FAQ 31 (described above) apply to businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations.
- On April 29, 2020, the SBA issued FAQ 39, making clear that the SBA, in consultation with the Treasury, will review all loans in excess of $2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application.

Paycheck Protection Program:
Borrower Attestations

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Necessity of the Loan Certification:

- On May 13, 2020, the SBA issued FAQ 46, providing that:
  - Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification in good faith.
  - The SBA will review all PPP loans in excess of $2 million.
    - If the SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, the SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness.
    - If the borrower repays the PPP loan after receiving notification from the SBA, the SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request.
    - The SBA's determination concerning the certification regarding the necessity of the loan request will not affect the SBA's loan guarantee.

Paycheck Protection Program: *Uses of Loan Proceeds*

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At least 75% of loan proceeds must be used for payroll costs

- **Includes** salary, wages, commissions, or similar compensation; all cash compensation paid to employees (including housing allowances); cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.
- **Excludes** compensation of employees whose principal place of residence is not in the United States (may consider IRS regulations (26 CFR § 1.121-1(b)(2))
- **Excludes** individual compensation in excess of $100,000 annual salary
- **Excludes** federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020
- **Excludes** income taxes required to be withheld
- **Excludes** compensation to independent contractors and sole proprietors
- **Excludes** qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act

Up to 25% of loan proceeds can be used for non-payroll costs

- Mortgage interest payments
- Rent
- Utilities
- Interest on debt that was incurred prior to February 15, 2020
- Refinancing an SBA Emergency Injury Disaster Loan made between January 31, 2020 and April 3, 2020

Paycheck Protection Program: *Loan Forgiveness*

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Covered Period	➢ Eight-week period beginning on the date of the disbursement of the loan (the "Covered Period")
Covered Costs	➢ See Slide 17.
Reduction Based on Reduction in Number of Employees	➢ Reduced if the average number of full-time equivalent employees per month ("Monthly FTEs") during the Covered Period is less than (at the election of the borrower) the average number of Monthly FTEs employed (i) from February 15, 2019 to June 30, 2019 or (ii) from January 1, 2020 to February 29, 2020. A seasonal employer can also elect to use the period from February 15, 2019 to June 30, 2019. ➢ Employer may cure the reduction by eliminating the reduction in the number of Monthly FTEs by June 30, 2020.*
Reduction Based on Salary and Wages	➢ Reduced by the amount of the reduction in total salary or wages of employees during the Covered Period in excess of 25% of the employee's salary or wages during the most recent full quarter before the covered period that they were employed (excluding employees with salary or wages of more than $100,000 in 2019). ➢ Employer may cure the reduction by eliminating the reduction in salary or wages by June 30, 2020.*
*De minimis exemption	➢ The SBA and Treasury intend to issue an IFR excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the loan forgiveness reduction calculation. To qualify for the exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.

Paycheck Protection Program: *Loan Forgiveness*

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Application:

- On May 15, 2020, the SBA and Treasury issued the Loan Forgiveness Application and detailed application instructions, providing:
  - Options for borrowers to calculate payroll costs using an "alternative payroll covered period" that aligns with their regular payroll cycles.
  - Flexibility to include in the forgiveness amount eligible non-payroll expenses and payroll expenses paid or incurred during the eight-week period after receiving the PPP loan.
    - Eligible non-payroll expenses <u>cannot</u> exceed 25% of the total forgiveness amount.
  - Step-by-step instructions on how to perform calculations to confirm eligibility for loan forgiveness.
  - Statutory exemptions from loan forgiveness reduction based on rehiring by June 30, 2020.
  - New exemption from loan forgiveness reduction for borrowers who made a good-faith, written offer to rehire workers that was declined.

The SBA is expected to issue additional regulations and guidance to further assist borrowers complete their applications and lenders understand their responsibilities.

Paycheck Protection Program:
Lender Eligibility and Sales

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Current SBA 7(a) lenders	➢ Automatically approved.
Federally insured depository institutions, federally insured credit unions and certain Farm Credit System institutions	➢ Automatically qualified, upon transmission of the CARES Act Section 1102 Lender Agreement (SBA Form 3506), unless they are designated in Troubled Condition by or are subject to a formal enforcement action with their primary federal regulator regarding unsafe or unsound lending.
Certain depository or non-depository financing providers	➢ Must originate, maintain or service more than \$50 million (\$10 million for certain community development financial institutions and majority minority-, women-, or veteran/military-owned lenders) in business loans or other commercial financial receivables and participation interests (among other requirements) or be service providers to an insured depository institution. ➢ These lenders must comply with the Bank Secrecy Act. ➢ Must submit an application to the SBA (SBA Form 3507).

SBA purchase of the loan	➢ Banks may request that the SBA purchase the expected loan forgiveness amount of a PPP loan or pool of PPP loans.
	    ➢ *Seven weeks after the loan* has been disbursed.
	    ➢ Purchased *within 15 days* after receiving a report from the lender that demonstrates that the expected forgiveness amount is reasonable.

Sales and the Secondary Market	➢ A PPP loan may be sold into the secondary market after the loan is disbursed at a premium or a discount to par value. Loans sold in the secondary market are 100% SBA guaranteed. ➢ Lenders may sell all their interest, or a participating interest, in PPP loans to other participating lenders in accordance with 13 CFR § 120.432(a) & (b) and SBA guidance, found here, and here.

Paycheck Protection Program: *Disbursement Rules*

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IFR on Disbursements:

- The lender must make a one-time (except for eligible loan increases, see here) full disbursement of the PPP loan within ten calendar days of loan approval. For purposes of this rule, a loan is considered approved when the loan is assigned a loan number by the SBA.
  - Lenders are not responsible for delays in disbursement attributable to a borrower's failure to timely provide required loan documentation, including a signed promissory note.
  - Loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender.
  - When disbursing loans, lenders must send any amount of loan proceeds designated for the refinance of an EIDL loan directly to the SBA and not to the borrower.
- Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 22, 2020.
- A lender will not receive a processing fee: (1) prior to full disbursement of the PPP loan; (2) if the PPP loan is cancelled before disbursement; (3) if the PPP loan is cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repays the loan proceeds to conform to the borrower's certification regarding the necessity of the loan request); or (4) on PPP loan increases submitted after the required time frame (which appears to be after the lender's submission of the initial SBA Form 1502 (or after the date Form 1502 was required to be submitted)).
- A lender must report through either E-Tran Servicing or the SBA Form 1502 any PPP loans that have been cancelled before disbursement or that have been cancelled or voluntarily terminated and repaid after disbursement.

Paycheck Protection Program:
Lender Diligence and Underwriting

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Lenders Can Rely on Certifications	➢ Lenders can rely on certifications of the borrower in order to determine borrower eligibility and use of loan proceeds, and rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. ➢ According to the IFR, lenders "<u>will be held harmless for borrowers' failure to comply with program criteria</u>."

Underwriting Obligation	➢ The lender's underwriting obligation is limited to:
	    ➢ Confirming receipt of the certifications in the PPP loan application;
	    ➢ Confirming receipt of information demonstrating a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
	    ➢ Confirming the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted by the borrower; and
	    ➢ Following the applicable Bank Secrecy Act requirements (see next slide).

No need to Replicate Calculations	➢ Lenders are not required to replicate every borrower's calculations relating to payroll costs. ➢ According to SBA FAQ 1, lenders are expected to perform "a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost."
No Verification of Affiliation	➢ According to SBA FAQ 4, lenders may also rely on borrower certifications regarding affiliation.
No "Credit Elsewhere"	➢ Lenders do <u>not</u> need to evaluate whether an applicant could obtain credit elsewhere when determining an applicant's eligibility for a PPP loan.

Paycheck Protection Program:
BSA/AML Concerns

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Treasury and SBA Guidance:

- In response to warnings that lack of clarity regarding BSA/AML obligations could hamper lending efforts, Treasury and the SBA issued helpful FAQ guidance.
  - Overall, PPP lenders are required to follow applicable BSA requirements, and institutions not subject to the BSA must establish AML compliance programs to participate in the PPP (or rely on another institution's program).
  - Unless otherwise required on a risk basis, PPP lenders need not collect and verify beneficial ownership information for existing customers that have not previously been subject to Customer Due Diligence ("CDD") Rule diligence.
    - If an existing customer has been subject to CDD Rule diligence, and beneficial ownership information was previously verified, PPP lenders need not re-verify the information.
  - The CDD Rule requirement to collect and verify beneficial ownership information from new customers applies to PPP loans to the same extent as any other customer relationship.
    - Collection of beneficial ownership information at 20% threshold to determine PPP eligibility is deemed to satisfy the CDD Rule (default threshold is 25%).

Paycheck Protection Program:
Lending to Directors and Shareholders

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Eligible Businesses Owned by Directors or Shareholders of PPP Lenders	➢ On April 14, 2020, the SBA issued an IFR stating, among other things, that SBA lending restrictions (including 13 CFR 120.110 and 120.140) will not apply to prohibit an otherwise eligible business owner from obtaining a PPP loan from the PPP lender if such business is owned (in whole or part) by an outside director or less than 30% shareholder in a PPP lender. ➢ The eligible business must follow the same process as any similarly situated customer or account holder of the lender. ➢ The SBA lending restrictions would continue to apply to officers and key employees of a PPP lender.
Exemption from Regulation O for Certain Insiders	➢ On April 17, 2020, the Federal Reserve issued an IFR stating that PPP loans will not be subject to section 22(h) of the Federal Reserve Act or the corresponding provisions of Regulation O if they are not prohibited under the SBA lending restrictions. ➢ Under section 22(h) of the Federal Reserve Act and Regulation O, loans to insiders are subject to quantitative and qualitative limits and, in certain circumstances, prior approval requirements by the bank's board. ➢ Regulation O also requires banks to keep certain records and make certain disclosures concerning extensions of credit subject to the rule.

Contacts

Debevoise & Plimpton

Matthew E. Kaplan
Partner, Capital Markets
Tel: +1 202 909 7334
mekaplan@debevoise.com

Rafael Kariyev
Partner, Tax
Tel: +1 202 909 6383
rkariyev@debevoise.com

Satish M. Kini
Partner, Financial Institutions
Tel: +1 202 383 8190
smkini@debevoise.com

Gregory J. Lyons
Partner, Financial Institutions
Tel: +1 212 909 6566
gjlyons@debevoise.com

David L. Portilla
Partner, Financial Institutions
Tel: +1 212 909 6041
dlportilla@debevoise.com

Jeff Robins
Partner, Financial Institutions
Tel: +1 212 909 6526
jlrobins@debevoise.com

Jeffrey E. Ross
Partner, Finance
Tel: +1 212 909 6465
jeross@debevoise.com

Steven J. Slutzky
Partner, Capital Markets
Tel: +1 212 909 6036
sjslutzky@debevoise.com

Alison M. Hashmall
Counsel, Financial Institutions
Tel: +1 212 909 6837
ahashmall@debevoise.com

Dave G. Sewell
Counsel, Financial Institutions
Tel: +1 212 909 6755
dsewell@debevoise.com

Will C. Giles
Counsel, Financial Institutions
Tel: +1 202 383 8202
wgiles@debevoise.com