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CARES ACT IMPACT ON BANKING INDUSTRY – SBA AND PPP LOANS

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The information included in this document is based on guidance by various government agencies and the recently passed CARES Act developed for banker use and consideration. This is not intended to replace advice from bank legal counsel, CPA, or others. Associations are not paid advisors for your bank – the task force assembled gathers and disseminates available information for our member organizations but it is their responsibility to consult appropriate advisors to make sure the actions their organization is taking are appropriate.

SBA Loan Programs

Payment Relief on Existing SBA loans:

SBA is required to pay the principal, interest, and any associated fees owed on all 7(a) and 504 loans in regular servicing beginning with the April 1 payment for 504 and March 27 for 7(a) and the first payments due for new borrowers for a period of six months.

Below are the three scenarios clearly outlined in the Act:

- Existing loan; six-month payment relief begins with the next payment due
- Existing loan on deferment; six-month payment relief begins with the next payment due on the loan after the deferment period ends
- New loans made within six months of the date of enactment of the Act (3/27/2020); six months of payments beginning with the first payment due on the loan.

7(a) language: Under the CARES Act, 7(a) Borrowers are relieved of any obligation to pay the principal, interest and any associated fees that are owed on a 7(a) loan in a regular servicing status (including Community Advantage loans) for a 6-month period beginning with the first payment due on a loan after March 27, 2020. SBA will pay this first loan payment to the Lenders within 30 days of the first loan payment due date after March 27, 2020. If a Lender receives a loan payment from a Borrower after March 27, 2020, the Lender must inform the Borrower that it has the option of the Lender either returning the loan payment to the Borrower or applying the loan payment to further reduce the loan balance after application of SBA's payment.

To make the first payment, SBA will need Lenders to provide the gross monthly loan amount due (that includes both the guaranteed and non-guaranteed portions of the loan) as soon as possible to Colson. SBA will provide further guidance to Lenders on the method and the date by which Lenders must provide the gross monthly loan amount.

SBA Loans Q & A

SBA Economic Injury Disaster Loan (EIDL) Program:

- Expands eligibility for access to tribal businesses, cooperatives, sole proprietors, independent contractors and private non-profits during the covered period from Jan. 31, 2020, to Dec. 31, 2020.
- Allows for an EIDL to be expedited to provide access to capital through an emergency grant, which is an advancement of \$10,000 within three days to maintain payroll, provide paid sick leave and to pay other debt obligations.
- These are direct loans obtained through the SBA.
- Who is eligible for the EIDL program?
 - Businesses, either for profit or non-profit (501c (3) with ≤500 employees (FTE)
- What is the available loan amount?
 - Up to \$2 million but will be determined by an SBA Underwriter
- What is the loan term?
 - Up to 30 years
 - Loans may be prepaid without penalty regardless of the term
- What are the fees associated with this product?
 - All borrower and lender fees are waived
- What is the interest rate?
 - 3.75% if a for-profit; 2.75% if a non-profit
- Are there collateral requirements?
 - Not for loans ≤\$25,000
 - Yes, for loans >\$25,000; requires all available collateral, no appraisals required on RE (there is some recent indication SBA is waiving the collateral requirement for all EIDL loans)
- Do we need personal guaranties?
 - Not for loans ≤\$25,000
 - Yes, for loans >\$25,000
- How quickly can funds be disbursed?
 - Estimated at 30 days, application to receipt of funds
- Is there loan forgiveness?
 - No
- How do I apply?
 - Direct with the SBA at www.sba.gov/disaster

SBA Economic Injury Disaster Grant Program:

- Who is eligible?
 - Businesses, either for profit or non-profit (501c (3) with ≤500 employees (FTE) in business prior to January 31, 2020
- Available grant amount?
 - \$10,000 to any small businesses and non-profits that apply for an SBA EIDL within three days of applying for the loan
 - The grant does not have to be repaid even if the grantee is subsequently denied an EIDL
- Use of the grant?
 - Maintain payroll
 - Provide paid sick leave
 - Meet increased production costs due to supply chain disruptions
 - Pay business obligations including debt payments, rent and mortgage payments
- How do I apply?
 - Direct with the SBA at www.sba.gov/disaster

Paycheck Protection Program (PPP)

Provides forgivable Small Business Administration (SBA) loans to small businesses (generally less than 500 employees), including sole proprietors and self-employed individuals.

There are opportunities for lenders that currently do not lend under the program. Criteria has been established for insured depository institutions, insured credit unions, institutions of the Farm Credit System chartered under the Farm Credit Act of 1971 and other lenders that do not already participate in lending under programs of the SBA, to participate in the paycheck protection program to provide loans until the date on which the national emergency declared by the President under the National Emergencies Act expires.

Eligibility:

- Small business concerns, any business concern, nonprofit org., veterans org., or Tribal business concern who employ not more than the greater of 500 employees – or if applicable – the size standard in number of employees established by the SBA for the industry in which the business concern, nonprofit organization, etc. operates.
- Eligible self-employed individuals, independent contractors, or sole proprietorships.
- Business concerns that employ not more than 500 employees per physical location of business concern and is assigned a NAICS code beginning with 72 (Accommodation and Food Services). Also includes franchises.
- Borrower eligibility would consider whether the borrower was operational on February 15, 2020 rather than repayment ability.
- Borrower had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors as reported on form 1099-MISC.

Documentation:

- An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.

Maximum Loan Amount:

- Loan size would equal an employer's average monthly payroll x 2.5 maxing out at \$10 million.
- The Lesser of:
(A) Multiply the average total monthly payments by the applicant for payroll costs incurred during the full year 2019 x 2.5;

If applicant is seasonal employer -- as determined by the SBA, the average total monthly payments for payroll is the 12-week period beginning February 15, 2019, or at the election of the eligible recipient, March 1, 2019, and ending June 30, 2019 x 2.5;

Plus the outstanding amount of an SBA disaster loan made between 1/31/2020 and ending on the date on which the PPP loan is made available to be refinanced under this program.

Or

(B) \$10,000,000

Allowable Uses:

- Payroll, insurance premiums, rent and utility payments.
- Continuation of group health care benefits during periods of paid sick, medical, or family leave and insurance premiums.
- Employee Salaries, commissions or similar compensations.

- Interest on any mortgage obligation (excluding payment or prepayment of principal)
- Interest on any other debt obligations incurred before the covered period.

General Details:

- 100% SBA guaranteed loans to cover specified operating costs.
- Delegated authority to all current SBA Section 7(a) lenders and lenders who join and make loans under the program.
- Interest Rate will be 1.0%.
- Waives collateral and personal guarantee requirements under this program (unsecured/non-recourse). No recourse EXCEPT in case when loan proceeds are used for an unauthorized purpose.
- Waives traditional SBA 7(a) fees.
- Waives pre-payment penalty.
- Waives traditional SBA 7(a) “No credit elsewhere” test.
- SBA to pay lender a processing fee within 5 days of loan disbursement of 5% for loans of \$350M or less, 3% for loans > \$350M to \$2MM and 1% for loans > \$2MM to \$10MM.
- Borrowers must make a good faith certification that (a) the uncertainty of current economic conditions makes necessary the loan request to support ongoing operations, (b) funds will be used to retain workers, maintain payroll, make mortgage payments, lease payments and utility payments, (c) recipient does not have an application pending for another loan for this purpose and amount or received another covered loan, (d) during the period beginning on February 15, 2020 and ending on December 31, 2020, recipients have not received amounts for same purpose (*can’t get multiple loans for the same purpose – double dipping*).
- The cost of participation in the program would be reduced for borrowers and lenders by providing fee waivers for an automatic deferment of payments and no prepayments penalties.
- 100% government guarantee.
- SBA will register each loan using the TIN assigned to borrower (not later than 15 days after date loan is made).
- The maximum loan amount for SBA Express loans would increase from \$350,000 to \$1 million and on January 2021, the maximum amount will revert back to \$350,000.

Maturity for Loans with Remaining Balance after Application of Forgiveness:

- Remaining balance will continue to be guaranteed by SBA.
- Maximum maturity of 2 years from loan date.

Loan Deferment (Sec 1102/(M) page 25, line 19):

- Eligible recipients are considered “impacted borrowers” and lenders are required to provide complete payment deferment relief (principal, interest and fees) for not less than 6 months.

Loan Forgiveness (Sec 1106):

- Limited loan forgiveness for amounts spent on payroll costs, rent and utilities payments, and Interest payments on mortgages for borrowers that apply. The amount forgiven will be reduced by any reduction in employees retained. Eligible Recipient is eligible for debt forgiveness on a covered loan in an amount equal to the following payments made between the 8-week period beginning the date of origination of a covered loan (covered period):
 - payroll costs,
 - interest payments on mortgage obligations (excluding principal and prepaid principal),
 - rent, and
 - utility payments
- Amount of forgiveness cannot exceed principal balance.
- SBA will, within 90 days of the loan forgiveness, reimburse lender, plus any interest accrued through the date of the payment.

- Amount of loan forgiveness reduced if borrower reduces number of employees (layoffs) by >25% without rehiring to bring the workforce reduction to <25%.
- Cancelled indebtedness will not be included in the borrower's taxable income.

Calculation: Divide Average number of FTE per month employed by eligible recipient during the covered period – by—borrowers choice of average FTE per month between 2/15/20 – 6/30/20 or average FTE per month employed by recipient from 1/1/20 – 2/29/20, or in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

Calculation of Average number of Employees: — Average number of FTE = average number of FTE for each pay period falling within a month.

- Reduction Relating to Salary and Wages:
 - The amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
 - An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.
- An eligible recipient with tipped employees may receive forgiveness for additional wages paid to those employees.

Borrower applies for Debt Forgiveness through Lender:

- Eligible recipient of debt forgiveness will submit to lender servicing the loan an application, which will include docs verifying number of FTE and pay rates for the period described including payroll tax filings to the IRS and State income, payroll, and unemployment insurance filings, cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, lease obligations and utility payments, plus any other documentation the SBA deem necessary. There will be no forgiveness without borrower submitting to lender proper documentation.
- Lender must issue decision on loan forgiveness application not later than 60 days after receiving the application.
- Debt forgiveness in this program is NOT a taxable event (but borrower should consult with CPA).

Definitions:

- **Payroll Costs:** Sum of all payments of any compensation with respect to employees that is a
 - salary, wage, commission or similar compensation;
 - payment of cash or equivalent;
 - payment of vacation, parental, family, medical, or sick leave;
 - allowance for dismissal or separation;
 - payments required for provisions of group health care benefits, including insurance premiums;
 - payment of any retirement benefits; or
 - payment of State or local taxes assessed on the compensation of employees, and
 - the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings for self-employment or similar compensation that is not more than \$100,000 in one year as prorated for the covered period.
 - Exclusions:
 - The compensation of individual employee in excess of annual salary of \$100,000 as prorated for the covered period.
 - Taxes imposed or withheld under chapters 21, 22, or 24 or Internal Revenue Code of 1986 during covered period.
 - Compensation of an employee whose principal place of residence is outside the U.S.

- Qualified sick leave wages for which a credit is allowed under section 7001 of Families First Coronavirus Response Act, or
 - Qualified family leave wages for which a credit is allowed under section 7003.
- The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits.

Paycheck Protection Program FAQs (Borrowers/Customers)

The Act creates an additional 7(a) loan referred to as a **Paycheck Protection Program (PPP) loan**. PPP loan provisions within the Act are outlined below, subject to additional guidance to be provided by SBA:

- **Who is eligible?**
 - Businesses, either for profit or non-profit (501c (3) or 501c (19)) with ≤ 500 full-time equivalent employees
 - If a company's NAICS code begins with 72 (hospitality and food service industries) then the ≤ 500 employee provision is considered on a "per physical location" basis
- **What are "covered costs"?**
 - The amount of "Payroll related costs" is defined as the sum of payments of any compensation with respect to employees that is a salary, wage, commission, tip, vacation, parental, family, medical leave, sick leave, allowance for dismissal or separation, group health care benefits, retirement benefits and state or local taxes
- **What is the available loan amount?**
 - The lesser of:
 - Average monthly payroll x 2.5 (payroll costs incurred during the 1-year period before the date on which the loan is made); or
 - \$10,000,000
- **What may the proceeds of the loan be used for?**
 - During the "covered period" (2/15/2020 to 6/30/2020) funds may be used for payroll related costs (as described above), utilities, rent, interest on any mortgage payment (not principal), interest on other debt obligations for loans incurred prior to 2/15/2020
- **Is there a maximum loan amount?**
 - \$10 million on the PPP loan
- **Is loan forgiveness a feature of the PPP loan?**
 - Yes, the amount paid by the borrower to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments during the 8 week period beginning on the date of the covered loan can be forgiven.
- **What is the payment structure of this loan?**
 - Lenders are required to defer monthly payments for a period of six months.
- **What is the loan term?**
 - The term of loan is 2 years
- **What is the SBA guaranty for this loan?**
 - SBA guaranty under the PPP program is 100%
- **Are their SBA Guaranty Fees required?**
 - All borrower and lender fees to the SBA are waived
- **SBA processing fees to the lender?**
 - For loans up to \$350K is 5%, \$350+ - \$2mm is 3%, and loans from \$2mm+ - \$10mm is 1%
- **What interest rate do I charge?**
 - The rate will be 1.0%
- **Is collateral required?**
 - No
- **Does this loan need personal guaranties?**
 - No
- **How long do I have to close these loans?**
 - Loans must be closed prior to June 30, 2020
- **How do customers apply?**
 - This loan allows for delegated underwriting, an SBA approved bank can complete, or any 7(a) lender
 - Small business and sole proprietorships may apply beginning Friday, April 3, 2020.
 - Independent contractors and self-employed individuals may apply beginning April 10, 2020.

Bank Q&A

1. Given expected huge volumes, how do we prioritize loan requests?

The recommendation is that banks first address current customers and more specifically, those in critical industries. When originating a loan for a non-bank customer, ensure thorough KYC processes are followed to avoid any fraudulent activity. Consider training and reallocating bank staff that are not as busy to these functions to assist.

2. Are there any circumstances where the bank would NOT approve a borrower for this loan? Is it an option? What about watch rated and worse credits or concern about the viability of business?

On the application, if the answers to questions 1 or 2 are answered yes, the loan will not be approved. If questions 5 or 6 are answered yes, the loan will not be approved.

3. Is the refinance of an existing SBA 7(a) loans into PPP loan an option?

One of the provisions of the Care Act includes payment relief for 6 months (not required for repayment). This is not deferred payments, but the SBA will make P&I payments, and associated fees. Because of that, a PPP loan is not able to refinance an existing 7(a) express loan.

4. Certification Document: Who prepares this (SBA or Bank), Will we get guidance? Information included in the doc (things being certified). How do we deal with "double dipping"? (loans from different sources). Is this responsibility of Bank?

Certification is part of the application.

5. Do you start the application for forgiveness at loan closing to expedite this process or wait the 8 weeks to begin?

The forgiveness process should begin after 8 weeks.

6. How should we structure the initial PPP loan?

The PPP loan is a 2-year loan, with all payments deferred for 6 months.

7. How do we handle accrued interest of residual loans?

Classification issues if not brought current and cannot capitalize within note. The following is from Question 1 in the Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease 2019 (Referred to as COVID-19) – As of March 27, 2020 on the FDIC website: "Financial institutions may want to consider addressing any deferred or skipped payments by either extending the original maturity date or by making those payments due in a balloon payment at the maturity date of the loan. When deferring or skipping payments, providing borrowers with accurate disclosures that are consistent with federal and state consumer protection laws will help to avoid any misunderstandings relative to the changes in the terms." If the Bank determines that the amount of accrued interest is impaired than it would be considered for non-accrual determination.

8. \$100,000 Salary Limitation: If salary is \$125M... is it a cap at \$100,000 or is the whole \$125M salary tossed out of the equation?

It is a cap of \$100,000 – so \$100,000 would be eligible when calculating the maximum loan size.

- 9. Borrower rents from a related entity on which there is a mortgage... do you use the lesser of rent per lease or interest on the mortgage? If he is renting from self/related party, is rent payment allowed at all? What if the building is free and clear (no interest)?**

Interest on the mortgage. In the event the building is free and clear, the pro rata expenses to maintain the property (maintenance, property taxes, utilities if not paid by the Operating Company).

- 10. "Bad Boy Clause": What to do when borrower uses funds for unauthorized uses. Where do we document or add to certification document?**

Lenders should explain what the loan proceeds are used for at loan close. If the borrower does not adhere to the eligibility requirements the loan is subject to being non forgivable.

- 11. Timing of Funding: When do we fund? What is the process and timing of acknowledgement/Registration by SBA?**

The SBA will register each loan using the TIN assigned to the borrower not later than 15 days after the loan is made.

- 12. Collection and guarantee process if a residual loan goes bad? Bank or SBA? (Is it similar to collection on 7a today. bank collects THEN guarantee kicks in?)**

SBA will require the Bank to submit the application information to the SBA for its payment on the 100% guaranty.

- 13. Existing SBA 7(a) loans: Are they also having payments deferred? Payments paid to bank by SBA?**

The SBA will provide payment relief for 6 months and is required to pay the principal, interest and any associated fees.

- 14. Is there a reduction of Guarantees from 100% to 75% or 85% after 12/31/20? Is this anywhere in the CARES Act?**

There will not be a reduction.

- 15. Borrowers may obtain a Paycheck Protection Program (PPP) loan OR a COVID-19 SBA DIRECT Economic Injury Disaster Loan (IEDL), but not both. (If a Borrower has applied for an EIDL DIRECT loan but now wishes to instead obtain a Paycheck Protection Program loan, they may withdraw their EIDL application any time prior to closing/disbursement). How do you verify that? Certification document?**

The borrower will attest, as part of the PPP loan application and certification, they have not and will not obtain another loan under this program. EIDL loans, if obtained between January 31, 2020 and April 3, 2020, must be refinanced into the PPP loan.

16. Is there a standard application for our use, or should we develop our own?

An application has been shared and can be found on our websites and shared with banks statewide.

17. Do I need to go through the SBA for these loans, or do banks originate them?

For the PPP program, delegated authority has been given to all current SBA Section 7(a) lenders and lenders who join and make loans under the program, including those lenders who have not been recent active originators.

18. A land developer has many sub-contractors they pay with a 1099 would this or can this be part of their payroll expense or would they consider it an operational expense?

Each of those subcontractors are most likely independent business owners themselves so they would apply for their own PPP loan or EIDL.

19. SBA just came out with an update on the EIDL to have those clients that have applied for the loan to resubmitted the new condensed application and can get an immediate \$10k that will be forgiven within 3 days – a) is this an immediate thing or is there a test? b) do all those that submitted an EIDL application need to go and resubmit this new application? c) can clients just submit application for the \$10k forgiven loan portion?

The \$10,000 grant was outlined in the Act and states anyone who applies for an EIDL gets the grant regardless of whether or not they are approved for the loan. Receipt of the \$10,000 grant will cause a reduction of any PPP loan application by the same amount. Anyone who completed the application process prior to the Act should inquire directly of the SBA about the grant at www.sba.gov/disaster. They should have their application reference number to submit the request under. Small-business borrowers cannot get both an EIDL (Economic Injury Disaster Loan) and PPP loan at the same time. A borrower can apply for an EIDL loan now and the PPP loan when it becomes available. If a borrower accepts the EIDL loan, and subsequently qualifies for the PPP loan, the borrower can re-finance the EIDL loan into a PPP loan. Loans are limited to one per Taxpayer Identification Number.

20. What period of 12 months should be calculated to determine average payroll for the year?

Average monthly payroll for 2019.

21. How do we address seasonal employees when considering payroll analysis?

The calculation to determine loan amount would include taking the last 12 months expenses, divide by 12 multiply by 2.5 and that is the maximum loan amount. The Act gave other calculations for seasonal employers but to avoid creating unnecessary confusion if the bank takes the last 12 months expenses into account, it would cover all the seasons.

22. If the business owner has been in a situation whereby the owner guaranteed a historical SBA 7a loan which resulted in a defaulted loan, are they now ineligible to apply for a PPP loan that pertains to a separate business that they own?

Any borrower, where a loss on a government backed loan occurred in the past seven years, would be deemed ineligible for this loan product (question #2 on the application).

23. Are farms excluded from the PPP program? I have a farm customer who is still paying his farm manager though she is not actually working. He also has a few farm hands he's sent home but is continuing to pay.

As long as they qualify as a small business, there are no stated exclusions for farms in the act or the guidance provided to date.

24. Do we know yet, exactly how we would obtain the SBA guarantee for a given note?

Application information will be submitted via the E-TRAN SBA system to register with the SBA. Once finalized, you'll receive the SBA documentation/guarantee and number.

25. The PPP program has a \$349 billion budget, how do we know a specific loan will be included and covered?

There are very limited number of exclusions for the loan – see our deck for specific examples which include borrower responses on their application.

26. Do we have to apply/notify to get an authorization to use E-Tran?

Form 3506, will need to be completed for all lenders who do not currently have access to E-Tran. Send the form to: delegatedauthority@sba.gov.

For 8/2020 updated information from the SBA:

If you would like to submit loan authorization requests via our new Lender Gateway, [click here](#) and follow the steps below:

- Create an account on SBA Connect.
- Request authorization to the Paycheck Protection Lender Gateway by providing your FRS, FDIC, or NCUA number as well as your authorization number.
- Proceed to the [Lender Gateway](#) to begin submitting loan authorization requests.

27. If the loan is forgiven or changed to a grant, are the grant/forgiven amount taxable in any way?

There has been nothing published indicating this would be the case.

28. What substantiation documentation would we need for non-wage items that the 941's don't cover....employer paid health insurance, pension, unemployment... ?

Any employer paid expense related to payroll would count. The employer contribution to retirement, health plans, etc. would be included. See page 6 of this document for a full list.

29. How about someone who owns multiple businesses with separate tax id numbers. Can they only get one loan or can they only get one loan per tax id number?

The new application (4.2 update) has changed language regarding 20% ownership. The guidance states in Section K that "each eligible borrower may receive more than one PPP loan." Each TIN constitutes an eligible borrower, which means there can be one loan per TIN.

30. For payroll calculation, does it include wages, cost of monthly benefits, 401K matches, state unemployment, etc.? On the call it mentioned IRS940, but believe it will be all inclusive of this information.

No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

A sample checklist has been completed and does include benefits, etc.

31. Will there be additional documentation needed outside of the note and borrower application/certificate?

The documentation verifying payroll/other expenses and lender application.

32. I heard the application may change, specifically the OMB Control number? If that occurs, do we need the customer to complete an entire new app or just sign the new and attach?

The most current application is on our website and was released on 4.2.20.

33. Page 3 if the owner is going to sign the application, no signature is needed on the line above identifying "Signature of Authorized Representative"? I know, seems stupid, but thought I'd pass along and be certain.

Not stupid, and we concur.

34. One client has said that some of his workers likely would still stay at home, as they are a retail business shuttered by the government. If he is paying these employees who are not actively working the hours they usually would (they are staying home), will the SBA rule that not forgivable?

No, the intent of this relief is to assist small businesses and allow them to continue to pay employees (even if in a non-essential business) as they are all required to be at home.

35. Do we need to run a CAVIRS search for PPP Loan?

No.

36. If a client has two/three businesses with separate EIN (SSN for sole LLC) can they request separate loan applications for the PPP loan?

Yes

37. Can this loan be used for expenses of a business as long as it discloses under the purpose? If so, how do they account for it in the payroll line?

See page 6 of the deck, the guidance we have to date outlines the specific areas that may be accounted for in the payroll analysis, and exclusions. There are no business expense allotments. Note the loan may also be used (25% or less if it is to be forgiven) for rent/mortgage interest/utilities/etc. so the total loan may reflect those.

38. Do religious organizations qualify as non-profits?

If they are a 501(c)3 or a 501(c) 19.

39. Do US based companies qualify if they have foreign ownership? Question 7 on app seems to disqualify them.

We would agree.

40. Who does the authorization?

The lender will review with the business owner to complete the certification questions.

41. Do we use our own note and other documents for the loans or will there be specific docs from SBA?

A sample note created by the task force is on our websites for your use if you choose and if your bank approves. A sample promissory note has been provided by the SBA and can be found at SBA.gov. We are waiting for final guidance whether banks can use their own note for this loan program.

42. We thought this was going to be a loan for 10 years but this morning there was a reference to 2 years. What happens at the 2 year mark?

These are 2 year loans – and they reach maturity at that time.

43. If the borrow requests a different amount than what we calculated what number to we use?

Your calculation of payroll x 2.5%.

44. Can 501 C 7's apply for these loans?

No

45. How does the bank verify the dollar amount of the average monthly payroll costs?

From the documentation the customer provides.

46. What underwriting is required?

You will need to verify that a borrower was in operation on February 15, 2020. You will need to verify that a borrower had employees for whom the borrower paid salaries and payroll taxes. You will need to verify the dollar amount of average monthly payroll costs. You will need to follow applicable Bank Secrecy Act requirements.

47. Does the salary cap include health insurance, retirement? Example if you have an employee who earns \$90K salary but exceeds that with insurance and retirement.

No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

48. Is there guidance on how to complete the Number of Jobs: box on the application? Is that jobs/FTEs at time of application? Average FTEs for the time period (I.E. 2019, seasonal, or new business time frames) covered by the average monthly payroll included earlier in the application?

The time period is the average FTE/payroll for 2019. Number of jobs would be the number of FTEs the business is applying for to be covered by PPP as calculated with the above.

49. Do you know the process for how the SBA will track how much funding is left and how we know our approved apps have committed funding? We are assuming that we will review applications and decision them. If approved we then need to enter them into the E-Tran system in order for the SBA to commit funding. SBA's goal is to turn around a funding commitment/allocate funds and assign their loan number in 1 day (I think I heard that on the call yesterday)? After the SBA has committed funding in E-Tran can we then work towards a closing and disbursement of the loan and be assured we have the backing?

The process you lay out above is accurate as far as we understand. With regard to the money this is valid concern that we need to clarify with SBA, however, we are hearing that another stimulus package is likely and it is the desire of SBA/Treasury to fulfill any loan applied for that qualifies. This needs much more detail which we are working on. We understand that SBA will stop accepting applications when funding has reached it's max. **As of April 8, various industries experts have shared approximately \$70 billion has been submitted of the \$349 billion available.**

50. I wanted to ask about paying tax on the amount forgiven. I believe it was said that they will not have to pay tax on that?

The Act states that any portion of the loan that is forgiven will be excluded from gross income for taxes.

51. A sole proprietor who only has 1099 contractors cannot qualify to continue to pay them and themselves is that correct?

Independent contractors can apply beginning April 10, 2020 – they would apply for the PPP loan.

52. I was confused on the 6 month period where the payment is deferred on the PPP loan. Is SBA making the payments or does the loan balloon at maturity?

If the loan is not fully forgiven after the 8 week period after the loan is closed, the borrower will be responsible for paying the outstanding balance of the loan.

53. Can you apply for both a disaster loan and PPP?

Yes, but you cannot receive both.

54. If a borrower answers no, they have not been convicted of a felony, is the bank responsible if it turns out they were?

No, the liability is on the borrower.

55. For current SBA borrowers, can they apply and receive PPP?

Current borrowers receive 6 months of payment relief but can also receive PPP.

56. If you receive the \$10k EIDL Grant, can you also apply for PPP?

Yes, but the \$10k will be taken off the calculation for the total PPP requested loan amount.

57. Is there a difference between essential and non-essential businesses when it comes to approval for the PPP loan?

No.

58. Under PPP, can a business still pay people and not be open for business.

Yes. The main objective for the PPP is to allow businesses to continue to pay employees even when the business is not open.

59. Should existing 7(a) and 504 customers be notified and should clients make payments and then get reimbursed?

Yes, existing customers should be notified but will not be reimbursed for payments already made. The SBA will make payments on these loans for six months under this program. If a customer has already made a payment, they should contact their bank who can use it for payment following the expiration of the six month period.

60. Can we have guidance on if we can provide a PPP loan for a Director owned business? Reg "O" issue.

We have reached out for clarification, but until received, treat as any other Reg O loan – report and/or refer to another bank, whatever your current policy/procedure for treatment of Reg O lending requires.

61. When will the SBA loan docs – i.e. promissory note be ready? How do we get them?

We are developing a sample note and plan to have it out on our websites this afternoon for your review and use.

62. How are accountants being paid for their services in assisting borrowers with providing the right data?

If a borrower asks for assistance from their accountant to prepare their loan materials, the borrower will pay the accountant. If banks ask an accounting firm or another agent to assist the bank in validating application information, the fees would be paid by the bank, but not impact the loan proceeds to the borrower.

63. Has any final guidance been issued on seasonal employees - those starting to work in early April/May who would have been gearing up for Michigan's tourist season?

The ITR issued on April 2 states as one of the qualifying criteria for the PPP loan the business was in operation on February 15, 2020 with employees on the payroll at that time.

64. I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidelines/FAQs subsequent to the interim final rule?

No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications and subsequent guidance reflected in these FAQs.

65. I am getting SBA approvals that indicate a small fee to be paid by banks to SBA. Is this correct?

No, based on all the information we have gathered, this is an SBA system error - all national associations are aware and are requesting SBA fix going forward.

66. Are there other FAQs I should review?

We have published additional information on our website for your review and consideration.

67. Have there been updates based on interagency guidance revised 4/7/2020?

Interagency Guidance on COVID-19 Loan Modifications – revised 4/7/2020

- Added language that all loan modifications should comply with applicable laws and regulations and be consistent with safe and sound practices (including appropriate ALLL).
- Specifically adds a section on consumer protection requirements, including fair lending laws, to provide an opportunity for all borrowers to benefit from these arrangements.

There are additional comments about “good-faith” efforts will be considered if issues are noted in examinations and that “identifying issues, correcting deficiencies, and ensuring appropriate remediation” will be the focus as opposed to automatically taking consumer compliance public enforcement actions against the institution.

Other Considerations

Identified Increased Security Risks Due to Current Conditions:

- There are limited remote workforce resources for lenders during uptick in lending activity including laptops and other equipment.
- Increased difficulty on customer identify verification during limited in-person contact mandates,
- Increased chance of fraudulent activity to secure loans.
- Increased pressure by customers to use less-secure means of communications:
 - Personal email accounts vs business accounts
 - Personal cell/home phones vs business phones
 - Personal device or home network vs business device and business network

Outline Steps to Follow:

- Review your bank's information security policy for remote work to insure compliance. Pay close attention to:
 - Use and extent of personal devices.
 - BYOD (Bring You Own Device) policies.
 - Mobile Device Management policies and requirements.
 - Access hours policies for staff while remote.
 - Remote access to email and other communications or collaboration tools.
- Review current incident response plan for data breach or security incident and account for remote workforce that may also include the IT and security teams.
- Schedule recurring (daily or weekly) briefings with remote staff to discuss IT and cyber risks – increase discussions with lenders.
- Extend device security agents, software and security policies to all remote devices in use by remote workforce including lenders.
- Review your bank's electronic signature policy and capabilities for remote workforce use.

Identity Verification and Fraud Detection Precautions:

Provide training to staff to be extra cautious of the following requests:

- Requests by customer to use personal email as opposed to business email for correspondence or sending secure documents.
 - Instead, verify customer's business email and request they use online banking to add their personal email (to validate identity)
- Requests by customer to use mobile phones as opposed to business phones.
 - Instead, verify customer's business phone and request they use online banking to add their personal mobile phone (to validate identity)
- Requesting documents through secure methods (only allow secure transfers adhering to your bank policies).

Insurance Considerations:

- Bank management must be sure that any changes made to address the impacts of COVID-19 to privacy and security must be reviewed in contrast to the information provided to the cyber carrier who wrote the cyber insurance.
- For instance, allowing officers and employees to work from home should be a non-issue as long as the employees' laptops, computers and phones are encrypted and access authentication is how it was described in the bank's cyber application.
- All of the same means in protecting confidential information (PII, HPI, NPI) must be handled in the same legal fashion as if the employee were working on bank premises.

Title II – Assistance for American Workers, Families and Businesses:

To provide individuals with additional access to cash, the CARES Act allows individuals to access retirement accounts. Select provisions allow:

Retirement Plans: The bill waives the 10% penalty on early withdrawals up to \$100,000 from qualified retirement plans for COVID-19-related distributions if the withdrawal meets the following guidelines:

- Occurs during the 2020 calendar year to an individual (or the spouse of an individual) diagnosed with COVID-19 with a CDC-approved test.
- Made by an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff or reduced hours due to the virus.

Income attributable to an early withdrawal is subject to tax over a three-year period. Withdrawn amounts can be recontributed to qualified retirement plans without being subject to an annual contribution cap if made within three years (instead of the normal 60 days). The bill also waives all required minimum distributions for 2020 for all taxpayers, even those not impacted by the COVID-19 pandemic.

Other Impacts for Businesses:

- A zero percent regulatory capital risk weight and **temporary relief from troubled debt restructuring (TDR) disclosures**. Here is the detail from that section:

“TEMPORARY RELIEF FROM TDR DISCLOSURES.—Notwithstanding any other provision of law, an insured depository institution or an insured credit union that modifies a covered loan in relation to COVID–19–related difficulties in a troubled debt restructuring on or after March 13, 2020, shall not be required to comply with the Financial Accounting Standards Board H. R. 748—13 Accounting Standards Codification Subtopic 310–40 (‘Receivables – Troubled Debt Restructurings by Creditors’) for purposes of compliance with the requirements of the Federal Deposit Insurance Act (12 U.S.C. 1811et seq.), until such time and under such circumstances as the appropriate Federal banking agency or the National Credit Union Administration Board, as applicable, determines appropriate.”

Even though modifications noted above will not be considered TDRs, each financial institution should maintain an allowance allocation for loans with modifications as a result of COVID-19 as they see appropriate in accordance with their allowance for loan and lease loss policy. The institution should consider all information available in its conclusions on collectability of the loan that is modified. If in the institution’s analysis it concludes that specific modified loans will not be repaid, institutions should preserve the integrity of their internal loan grading methodology and maintain appropriate accrual status on affected credits. Financial institutions should appropriately recognize credit losses according to their charge-off policies as soon as a credit loss can be reasonably estimated.

Payroll Tax Credit Refunds: The law provides for advance refunding of the payroll tax credits enacted in earlier legislation (see below discussion of Employee Retention Credit).

Additionally, to address cash-flow concerns, the act provides federal payroll tax deferral of the employer’s matching portion of FICA until Dec. 31, 2021. This applies to payroll taxes due from March 27, 2020 until Dec. 31, 2020. One-half of the deferred taxes are required to be deposited by Dec. 31, 2021, and the remaining balance must be deposited by Dec. 31, 2022.

Net Operating Losses (NOL): The 80% income limitation for NOL deductions for the years beginning before 2021 is modified by the act. For business losses arising in 2018, 2019 and 2020, a five-year carryback is allowed. Businesses will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback.

Alternative Minimum Tax: Accelerates the year for which a fully refundable credit can be claimed in 2019, and corporations can elect to claim the fully refundable minimum tax credits in 2018.

Business Interest Limitation: Limitations have been amended from 30% of adjusted taxable income based on earnings before income tax, depreciation and amortization (EBITDA) to 50% for 2019 and 2020 (2020 in the case of partnerships). Taxpayers may elect to use 2019 income in place of 2020 for the computation.

Excise Tax: A temporary exception from excise tax is allowed for alcohol used to produce hand sanitizer through Dec. 31, 2020. Certain aviation excise tax is also suspended through the creation of an “excise tax holiday” through Dec. 31, 2020.

Improvement Property: Technical corrections to qualified improvement property allows for depreciation as a 15-year property and bonus depreciation for property acquired and placed in service after Sept. 27, 2017, to align with the Tax Cuts and Jobs Act.

Charitable Contributions: Limitations for charitable contributions deduction for businesses have been increased from 10% to 25% of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15% to 25% of taxable income.

Employee Retention Credit: Establishes the Employee Retentions Credit, which is a fully refundable tax credit tied to the payment of employee wages against the employer’s share of Social Security tax.

- All eligible employers would be permitted to claim a 50% credit of wages paid up to \$10,000 per employee.
- The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year.
- For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from Mar. 13, 2020, through Dec. 31, 2020.

Title III – Supporting America’s Health Care System in the Fight Against the Coronavirus:

Relief for College Students and Graduates with Outstanding Federal Debt Includes:

- Temporary relief for federal student loan borrowers that permits payments of principal and interest to be deferred for 6 months, through September 30, 2020, without penalty to the borrower for all federally owned loans.
- No penalty for students that fail to complete the semester or term as a result of COVID-19 such that the semester or term that was not completed would not count toward lifetime subsidized loan eligibility; would not be included in the student’s Federal Pell Grant Duration limit; and the funds received as Pell grants or Federal student loans would not be required to be returned to the Secretary of Education.

Employer-Paid Student Loans: Employer-paid student loans can apply for an exclusion of up to \$5,250 from the student’s taxable income for the 2020 tax year if payments were made by the employer after March 27, 2020 and before Jan. 1, 2021.

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy:

Provisions in this section are directed toward providing credit and liquidity to small business and the markets. These are temporary and generally **will expire** on the earlier of December 31, 2020 or the date on **which the national emergency is terminated**. The following are details:

- Lending through any of the FRB facilities must be broad-based, with verification that each participant is not insolvent and is unable to obtain adequate financing elsewhere. Loan forgiveness is not permissible in any such credit facility.
- Treasury will “endeavor to seek the implementation of a program or facility” through the FRB that provides financing to banks and other lenders that make direct loans to nonprofit organizations and eligible businesses with between 500 and 10,000 employees. The terms would include a requirement that the funds be used to retain at least 90 percent of the organization’s workforce. Limitations on compensation amounts.
- Direct lending loan terms include sufficient loan security; loan duration of not more than 5 years; stock buyback and dividend restrictions; at least 90 percent retention of March 24, 2020 employment through September 30, 2020; no loan forgiveness; U.S. business with predominantly U.S. employees.
- Authority for the FDIC to temporarily establish, through December 31, 2020, a debt guarantee program to guarantee debt of solvent insured depository institutions and depository institution holding companies. Noninterest-bearing transaction account may be treated as a debt guarantee program. Similarly, the NCUA may temporarily increase the share insurance coverage for non-interest-bearing transaction accounts.
- Authority for the OCC to temporarily exempt nonbank financial companies from the OCC’s lending limits as well as exempt transactions from the lending limits if they are in the public interest. Temporary relief expires on the earlier of December 31, 2020 or the end of the national emergency.
- A requirement that the Community Bank Leverage Ratio for qualifying community banks be reduced from 9 percent to 8 percent via interim final rule expiring on the earlier of December 31, 2020 or the end of the national emergency.
- **Permissibility for financial institutions, including credit unions, to elect to suspend U.S. GAAP for loan modifications related to COVID-19 that would otherwise be categorized as a troubled debt restructuring. The suspense would apply to loan modifications for loans that were not more than 30 days past due as of December 31, 2019 for the period beginning March 1, 2020 and lasting no later than 60 days after the lifting of the national emergency. This is the full detail:**

SEC. 4013. TEMPORARY RELIEF FROM TROUBLED DEBT RESTRUCTURINGS.

A financial institution may elect to:

Suspend the requirements under United States generally accepted accounting principles for loan modifications related to the coronavirus disease 2019 (COVID–19) pandemic that would otherwise be categorized as a troubled debt restructuring; and

Suspend any determination of a loan modified as a result of the effects of the coronavirus disease 2019 (COVID–19) pandemic as being a troubled debt restructuring, including impairment for accounting purposes.

Applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the applicable period for a loan that was not more than 30 days past due as of December 31, 2019; and shall not apply to any adverse impact on the credit of a borrower that is not related to the coronavirus disease 2019 (COVID–19) pandemic.

Documentation to maintain for modified loans for which suspensions under subsection (a) apply—

Financial institutions should continue to maintain records of the volume of loans involved; and Federal banking agencies may collect such loans for supervisory purposes.

- Permissibility for insured depository institutions, including credit unions, bank holding companies, or any of their affiliates to opt to temporarily delay compliance with the FASB Current Expected Credit Losses (CECL) methodology. Such an option will expire at the earlier of December 31, 2020 or the date on which the national emergency is terminated.
- A requirement that furnishers of information to credit reporting agencies who agree to an accommodation on an account of a consumer impacted by COVID-19 to report the account as “current” or as the same status as before the accommodation. Such credit protection is available beginning January 31, 2020 and ending at the later of 120 days after enactment or 120 days after the national emergency is terminated. *Section 4021.*
- A moratorium on foreclosures of federally backed mortgage loans for not less than 60 days beginning March 18, 2020.
- A moratorium on eviction filings or charges related to nonpayment where the landlord’s mortgage is federally backed.
- Temporary forbearance for federally backed 1-4 family mortgage loans experiencing financial hardship due, directly or indirectly, to COVID-19. Borrowers may request up to 180 days as well as an extension of a second 180 days. *Section 4022.* Temporary forbearance of up to 90 days is also available for federally backed multifamily mortgage loans, subject to renter protections during the forbearance period including no tenant evictions or late fee charges.

Sample Website Language for Banks

Sample One

The Coronavirus Aid, Relief, and Economic Security (CARES) Act passed by the legislature and signed into law by President Trump on March 27, includes emergency relief measures for small businesses with the Paycheck Protection Program (PPP). This program will be available for many small to medium-sized businesses in our community and with guidance provided by the Small Business Administration (SBA). We will begin accepting applications for small business and sole proprietorships on Friday, April 3 and independent contractors and self-employed individuals on Friday, April 10. We look forward to doing our part to get small businesses up and running again.

Sample Two

The newly enacted federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provides a variety of additional emergency relief programs for businesses (including the Paycheck Protection Program) and consumers. We are actively working to operationalize these programs as quickly as possible so that we can further assist our customers in maximizing their relief under the Act's provisions. We will begin accepting applications for small business and sole proprietorships on Friday, April 3 and independent contractors and self-employed individuals on Friday, April 10.

As we collectively navigate these uncertain times, the safety and well-being of our customers, employees and the communities we serve remains our top priority. We will continue to update our website as changes require.