

MBL Readout: SBA Interim Final Rule

Implements sections 1102 and 1106 of the CARES Act

What Lenders Should Know

- All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis
- Lenders may rely upon the certifications of borrower for:
 - Eligibility
 - Use of loan proceeds
 - Specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness
- Lenders will be held harmless for borrowers' failure to comply with program criteria
- Guarantee percentage is 100%
- No collateral will be required
- No personal guarantees will be required
- The interest rate will be 100 basis points or one percent
- There will be no up-front guarantee fee payable by borrower
- There will be no lender's annual service fee ("on-going guaranty fee")
- There will be no subsidy recoupment fee
- There will be no fee payable to SBA for any guarantee sold into the secondary market
- E-signatures or e-consents can be used regardless of the number of owners
- PPP is first-come, first-served
- Borrowers will not be required to make any payments for six months following the date of disbursement of the loan; however, interest will continue to accrue

Underwriting Criteria

- i. Confirm receipt of borrower certifications contained in PPP Application (SBA Form 2483);
 - ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
 - iii. Confirm the dollar amount of the average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and
 - iv. Follow applicable BSA requirements
- Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the PPP Application (SBA Form 2483) and such documentation as is necessary to establish eligibility such as:
 - Payroll processor records
 - Payroll tax filings
 - Form 1099-MISC
 - Income and expenses from a sole proprietorship
 - For borrowers that do not have any such documentation, the borrower must provide other supporting documentation such as:
 - Bank records, sufficient to demonstrate the qualifying payroll amount



Advance Loan Purchase by SBA

A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of the week seven of the covered period

- To submit for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA, which shall include:
 - PPP Application (SBA Form 2483) and supporting documentation submitted with such application;
 - PPP lender application (SBA Form 2484) and any supporting documentation;
 - A detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used;
 - Any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, canceled checks, and other payment documentation;
 - And any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable
- The Administrator will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.
- Loan Forgiveness
- The amount of forgiveness can be up to the full principal amount of the loan and any accrued interest
 - Actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan
 - No more than 25 percent of loan forgiveness amount may be attributable to non-payroll costs
- SBA will issue additional guidance on loan forgiveness

MBL Recommended Borrower Certifications

Though not explicitly required under the Interim Final Rule underwriting requirements, MBL recommends the borrower make certain attestations as to their eligibility. As noted, lenders may rely upon the certifications of borrower for Eligibility.

Recommended Borrower Certification Addendum

1. I certify that the borrower has 500 or fewer employees whose principal place of residence is in the United States, or is a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and that the business is a small business concern as defined in section 3 of the Small Business Act (15 USC 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or, A tax-exempt



nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and,

2. The business was in operation on February 15, 2020 and either had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC; or,
3. If the business operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, it was in operation on February 15, 2020.
4. I certify that all documentation that I have provided to lender to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship is true and accurate. I realize that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
 - a. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.
5. I further certify that the business is not a(n):
 - a. Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);
 - b. Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under §120.111);
 - c. Life insurance companies;
 - d. Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);
 - e. Pyramid sale distribution plans;
 - f. Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
 - g. Businesses engaged in any illegal activity;
 - h. Private clubs and businesses which limit the number of memberships for reasons other than capacity;
 - i. Government-owned entities (except for businesses owned or controlled by a Native American tribe);
 - j. Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
 - k. Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans;
 - l. Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; been indicted for a felony or a crime of moral turpitude;

- m. Businesses in which the Lender or CDC, or any of its Associates owns an equity interest;
- n. Businesses which:
 - 1. Present live performances of a prurient sexual nature; or
 - 2. Derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- o. Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which was defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss;
- p. Businesses primarily engaged in political or lobbying activities; and
- q. Speculative businesses (such as oil wildcatting).