

Model Policy 7436: CARES Act – Small Business Administration (SBA) Loans

{The SBA issued their Interim Final Rule on April 2, 2020. The interim final rule is effective immediately to allow for implementation of the program, but there is a 30-day comment period, which may initiate additional revisions. Therefore, the components of this policy related to the Paycheck Protection Program may change. As changes are made, the corresponding “policy revised date” will be updated.}

Policy Effective Date: April 3, 2020

Policy Revised Date: April 3, 2020

Policy Statement:

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), new resources are available to small businesses, certain non-profit organizations and other employers. These loans are made available through the Small Business Administration (SBA). The Credit Union may offer small business loan programs, designed to assist with immediate financial relief for their small business members. The loan programs outlined in this policy will be available to qualifying credit union members.

Guidelines

1. Paycheck Protection Program (PPP).

A. Member Eligibility

- a. Businesses, veterans’ organizations, tribal business concerns or nonprofit organizations that have fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by the SBA, if higher whose principal place of business is in the United States.
- b. Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals whose principal place of business is in the United States.
- c. Any business whose principal place of business is in the United States that employs not more than 500 employees per physical location of the business and that is assigned an NAICS code beginning with 72, for which the SBA affiliation rules are waived.
- d. The business was in operation on February 15, 2020; and had employees for whom they paid salaries and payroll taxes.
- e. The following would render the borrower **ineligible** for a loan:
 - i. Member engaged in any activity that is illegal under federal, state, or local law;
 - ii. A household employer (individual who employs nannies or housekeepers);
 - iii. An owner of 20% or more of the equity of the business if the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction or has been convicted of a felony within the last 5 years; or

- iv. The member or any business owned or controlled by the member (or any of the other owners), have ever 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.

B. Underwriting

- a. Verification and confirmation receipt of documentation demonstrating that the business member was in operation on February 15, 2020 (payroll processor records, payroll tax filings, Form 1099-MISC, or income and expense from a sole proprietorship or any other supporting documentation, such as bank records to sufficiently demonstrate the qualifying payroll amount, can be used).
- b. Verification that the business member had employees for whom they paid salaries and payroll taxes.
- c. Verification of the dollar amount of average monthly payroll costs.
- d. Eligible self-employed individuals, independent contractors, or sole proprietorships will provide documentation as necessary to establish themselves as eligible, including payroll tax filings report to the IRS, Forms 1099-MISC, and income and expenses from the sole proprietorship.
- e. Completion of applicable Bank Secrecy Act (BSA) requirements, including but not limited to the Member/Customer Identification Program (M/CIP).
- f. Confirmation of receipt of member's good faith certifications contained in the Paycheck Protection Program Application form issued by the SBA.

C. Member Good Faith Certification

- a. That the eligible member was in operation on February 15, 2020 and had employees to whom it paid salaries and payroll taxes or paid independent contractors as reported on a Form 1099-MISC;
- b. That the uncertainty of current economic conditions makes it necessary that the loan requested is to support the ongoing operations of the eligible member;
- c. Acknowledgement that 75% of the funds will be used to retain workers and maintain payroll and 25% of the loan proceeds will be used for making the mortgage interest payments, lease or utility payments;
- d. Documentation verifying the number of full-time employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments and covered utilities for the 8-week period following this loan will be provided to the lender;
- e. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Not more than 25% of the amount forgiven may be for the non-payroll costs;
- f. That the member does not have an application pending for a loan under the Paycheck Protection Program for the same purpose and duplicate amounts applied for;
- g. That the information provided in the application and all supporting documents is true and accurate in all material respects (false statements are punishable by law); and

- h. Tax documents are identical to those submitted to the Internal Revenue Service (IRS) and materials may be shared with the SBA's authorized representatives for purpose of compliance with loan requirements and SBA reviews.

D. Loan Amount and Limits.

- a. If the eligible member was in business February 15, 2019 – June 30, 2019, the max loan is equal to:
 - i. Aggregate **payroll costs** from the last twelve months for employees whose principal place of residence is in the United States.
 - ii. Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contract or sole proprietor in excess of \$100,000 per year.
 - iii. Calculate **average monthly payroll costs** (dividing the amount determined under ii. above by 12).
 - iv. Multiply the **average monthly payroll costs** by 2.5.
 - v. Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).
- b. **Payroll costs** include compensation to employees (whose principal place of residence is in the United States) in the form of salary, wages, or similar compensation: cash tips or 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, wage, commissions, income, or net earnings from self-employment or similar compensation.
 - i. Exclusions from payroll costs include:
 - 1. compensation to employees whose principal place of residence is outside the United States;
 - 2. compensation of an individual employee in excess of an annual salary of \$100,000 (prorated as necessary);
 - 3. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
 - 4. Qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.
 - ii. Independent contractors do not count as employees for the purpose of this loan, they have the ability to apply on their own.
- c. The maximum loan size is \$10 million.
- d. Eligible members can only receive one loan.

E. Loan Proceeds – Allowable Uses

- a. **Payroll costs** (as defined above) **(75% of the loan proceeds);**
 - i. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave and insurance premiums;
- b. Other costs **(25% of the loan proceeds);**
 - i. Interest payments on mortgage obligations (not mortgage prepayments or principal payments);
 - ii. Rent (including rent under a lease agreement);
 - iii. Utilities;
 - iv. Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
 - v. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.
- c. If the member applied for an SBA EIDL loan from January 31, 2020 through April 3, 2020, they can apply for a PPP loan. If the EIDL loan was not used for payroll costs, it does not affect the eligibility for a PPP loan. If the EIDL loan was used for payroll costs, the PPP loan must be used to refinance the EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- d. Funds used for unauthorized purposes will need to be repaid. If the funds are knowingly used for unauthorized purposes, the member will be subject to additional liability, such as charges for fraud.

F. Personal Guarantee / Collateral

- a. During the covered period, no personal guarantee and no collateral shall be required for the covered loan.

G. Interest Rate, Term and Payments

- a. Loans will be for a 2-year term.
- b. Interest rate will be at 1% (100 basis points).
- c. Payments do not have to be made for six months following the date of loan disbursement. However, interest will continue to accrue during this deferment.

H. Loan Forgiveness

- a. Loans will be eligible for forgiveness up to the full principal amount of the loan and any accrued interest. The member would not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes and employee compensation levels are maintained.
- b. The actual amount of loan forgiveness depends, in part, on the total amount of payroll costs, payments of interest on mortgage obligations, rent payments on leases and utility payments under service agreements incurred before February 15, 2020, over an 8 week period following the date of the loan.
- c. **Not more than 25% of the loan forgiveness amount can be attributable to non-payroll costs.**
- d. 75% of the loan proceeds shall be used for payroll costs.
- e. Amounts that have been forgiven will be considered canceled indebtedness by the Credit Union.

- f. For purposes of the purchase of the guarantee for a covered loan by the SBA, amounts which are forgiven will be treated in accordance with the procedures that are otherwise applicable to a 7(a) SBA guaranteed loan.
- g. The member seeking loan forgiveness will apply with the credit union, providing an application that will also include:
 - i. Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the current and prior years including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings.
 - ii. Documentation including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered payments (mortgage, lease and utilities).
 - iii. Certification from the representative who is authorized to make a certification on behalf of the business that:
 - 1. The documentation presented is true and correct;
 - 2. The amount of forgiveness is requested and was used to retain employees and for covered payments (mortgage, rent, or utilities); and
 - 3. Any other documentation that the SBA determines necessary.

I. SBA Guarantee

- a. The SBA guarantees 100% of the outstanding balance, and that guarantee is backed by the full faith and credit of the United States.
- b. SBA is waiving all guaranty fees, including the upfront and annual servicing fees.

J. Risk Weight – Regulatory Capital Requirements

- a. A covered loan shall receive a risk weight of zero under NCUA risk-based capital requirements.

K. Prepayment Penalty

- a. There will be no prepayment penalty for any payment made on a covered loan.

L. Agent Fees

- a. The Credit Union will be paid agent fees out of the fees received from the SBA.
- b. Agents cannot collect fees from the borrower or be paid out of the Payment Protection Program loan proceeds.
- c. The total amount that an agent may collect from the Credit Union for assistance in preparing an application for a PPP loan (including referral to the Credit Union) may not exceed:
 - i. One percent for loans of not more than \$350,000;
 - ii. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
 - iii. 0.25 percent for loans of at least \$2 million.

M. Secondary Market

- a. After the loan is fully disbursed, it may be sold on the secondary market.

- b. A PPP loan may be sold at a premium or discount to par value.
- c. SBA will issue guidance regarding any advance purchase for loans in the secondary market.

N. Advanced Purchase

- a. The Credit Union may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven (7) of the covered period.
- b. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs (75%), covered mortgage insurance, covered rent, and covered utility payments (25%) during the 8-week period.
- c. The Credit Union will submit a report requesting advanced purchase with the expected forgiveness amount to the SBA including:
 - i. PPP Application Form and supporting documentation;
 - ii. Detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for assumptions, alternative assumptions considered and why alternative assumptions were not used;
 - iii. Any information obtained from the member since the loans was disbursed that the Credit Union used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness; and
 - iv. Any additional information the SBA may require to determine whether the expected forgiveness amount is reasonable.

2. Emergency Economic Injury Disaster Loans (EIDL)

- A. The CARES Act has expanded the eligibility for access to EIDLs to include:
 - a. A business with not more than 500 employees;
 - b. Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;
 - c. A cooperative with not more than 500 employees;
 - d. An employee Stock Ownership Plan organization with not more than 500 employees; or
 - e. A tribal small business concern with not more than 500 employees.
- B. The list of eligible entities also now includes private non-profit organizations and small agricultural cooperatives.
- C. Loans made in response to COVID-19 will waive the personal guarantee on advances and loans below \$200,000 if the applicant has been in business for at least a year prior to the disaster.

3. SBA Loan Relief Program

- A. This relief program will apply to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans.

- B. SBA will cover all loan payments on these loans, including principal, interest and fees, for six (6) months.

4. SBA Loan Deferment Program

- A. If the credit union member is considered an impacted borrower, meaning they were in operation on February 15, 2020 and have an application for a loan made under 7(a) of the Small Business Act that is approved or pending approval on or after the date of enactment of the CARES Act, they are presumed to be adversely impact by COVID-19.
- B. During the covered period, each borrower who applies for a covered loan will be considered an impacted borrower and will be permitted to complete payment deferment relief with loans guaranteed under 7(a) for a period of not less than 6 months including payment of principal, interest, and fees, and not more than 1 year.

5. SBA Express Loans

- A. Express Loans offered under SBA 7(a) programs are increased to \$1,000,000 from \$350,000 until January 1, 2021 under the CARES Act.