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PPP Updates for Lenders

Legal Update

03.11.2021

Numerous changes have been made to the Paycheck Protection Program (PPP) in recent months, primarily stemming from the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) signed into law in December 2020 as part of the overall Consolidated Appropriations Act, 2021, and related administrative rules and guidance issued by the Small Business Administration (SBA). In this article, we address frequently asked questions and guidance regarding hold harmless agreements, lender fees and other updates contained in the reforms.

May Lenders be held harmless with respect to Borrower certifications?

Yes. A Lender may rely on any certification(s) or documentation submitted by an Applicant for a First Draw Loan or Second Draw Loan that (i) are submitted pursuant to all applicable statutory requirements, regulations and guidance related to the First Draw Loan or Second Draw Loan; and (ii) attest that the Applicant or recipient or entity has accurately provided the certification or documentation to the Lender.

If the Lender relies on the certification(s) or documentation provided by the Applicant with respect to the First Draw Loan or Second Draw Loan, an enforcement action may not be taken against the Lender and they will not be subject to penalties relating to loan origination or forgiveness if (i) the Lender acted in good faith with respect to PPP loan origination or forgiveness based on that reliance; and (ii) all other relevant federal, state, local and other statutory and regulatory requirements applicable to the Lender are satisfied regarding the First or Second Draw Loan.

If I was a Lender approved by the SBA to make First Draw Loans, may I make Second Draw Loans?

Yes. Lenders approved by the SBA to make First Draw Loans may also make Second Draw Loans under the same terms and conditions applicable to First Draw Loans. For Second Draw Loans, Lenders should be sure to confirm the following:

- Receipt of Borrower certifications in the Second Draw Application
- Receipt of information demonstrating that Borrower is eligible to receive the loan

- The dollar amount of average monthly payroll costs for 2019 or 2020 (this can be done by reviewing the payroll documentation submitted by Borrower with the Application)
- For Second Draw Loans greater than \$150,000 (or \$150,000 or less where the Borrower provides revenue reduction documentation at the time of Application), confirm the dollar amount and percentage of the Borrower's revenue reduction. This should be done by performing a good faith review of the Borrower's calculations and supporting documents. If the Lender should identify any errors, it should work with the Borrower to resolve them.

It goes without saying that Lenders are still expected to follow any applicable BSA requirements.

Can I use the SBA's Standard Operating Procedures?

Yes. For PPP loans, Lenders may use existing program guidance and the existing SBA Standard Operating Procedures to the maximum extent possible.

What Lender Processing Fees will I receive for Second Draw Loans?

- For loans of \$50,000 or less, Lenders may collect fees equal to 50 percent of the loan amount or \$2,500, whichever is less.
- For loans of \$50,001 to \$350,000, Lenders may collect fees equal to 5 percent of the loan amount.
- For loans over \$350,000, Lenders may collect 3 percent of the loan amount.

What about Agent Fees?

The Lender is only responsible for paying fees to an agent only where the Lender directly contracts with the agent.

Additional Information

Below are useful links to necessary forms. Forms and additional guidance can be found on the SBA and Department of Treasury's websites. We have also included links below to our other articles in this series.

Forms

- SBA IFR on Second Draw Loans
- SBA IFR on Loan Forgiveness Requirements and Loan Review Procedures
- SBA Standard Operating Procedures
- Revised Lender Application Form

- Second Draw Lender Application Form
- Revised Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions and Farm Credit System Institutions
- Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders
- Guidance on First Draw PPP Loan Increases
- Guidance on PPP Borrower Resubmissions of Loan Forgiveness Applications
- Guidance on PPP Procedures for Addressing Unresolved Issues for First Draw Loans
- Updated Guidance on Lender Processing Fee Payment

Article Series

- FAQs on PPP First Draw Loans
- FAQs on Second Draw PPP Loans
- FAQs on New PPP Forgiveness Rules
- FAQs on SBA Review of PPP Loans
- PPP Loans for the Smallest Businesses