Farm Credit Administration

1501 Farm Credit Drive
McLean, VA 22102-5090
(703) 883-4000

INFORMATIONAL MEMORANDUM

July 14, 2020

To: Chair, Board of Directors
Chief Executive Officer
Each Farm Credit System Institution

From: David P. Grahn
Director, Office of Regulatory Policy

Subject: Guidance on the Paycheck Protection Program for Small Businesses Affected by the COVID-19 Pandemic

Note: This informational memorandum supersedes and replaces the informational memorandum on the same subject issued June 18, 2020. Also, see the Paycheck Protection Program page on our website. This will be the central location for all the information and guidance we issue about the program. Please check this webpage regularly for updates.

The Farm Credit Administration is issuing this informational memorandum to provide Farm Credit System[1] (System) institutions with updated guidance on the Paycheck Protection Program (PPP).

What is the PPP?

On March 27, 2020, the president signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act (PDF))[2] to provide emergency assistance and health care response for individuals, families, and businesses affected by the COVID-19 pandemic. The PPP, which was implemented by the U.S. Small Business Administration (SBA) with support from the U.S. Department of the Treasury (Treasury), originally authorized up to $349 billion in forgivable loans to small businesses to support payroll and certain other needs during the COVID-19 pandemic. The Paycheck Protection Program and Health Care Enhancement Act,[3] which was enacted on April 24, increased the commitment for the PPP program to $659 billion in forgivable loans.

On June 5, the president signed the Paycheck Protection Program Flexibility Act of 2020, which amends the SBA Act and the CARES Act to modify certain provisions related to forgiveness of loans and to allow recipients of loan forgiveness under the PPP to defer

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[1] This informational memorandum does not apply to the Federal Agricultural Mortgage Corporation (Farmer Mac). Farmer Mac is not directly eligible to participate in the Paycheck Protection Program. Therefore, any reference to the Farm Credit System does not include Farmer Mac.
[2] P.L. 116-136.
[3] P.L. 116-139.

payroll taxes. The "covered period" during which borrowers may distribute the loan funds has been extended to 24 weeks from the date of origination or December 31, 2020, whichever occurs first.

As part of the Farm Credit System, your institution is eligible to participate in the PPP. System institutions that are already approved SBA 7(a) lenders are automatically approved to make PPP loans. All other System institutions will be eligible as you are approved and enrolled in the program.

Who can apply for a PPP loan, and when can the loans be made?

Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and certain other expenses through existing SBA lenders.

Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and certain other expenses through existing SBA lenders.

Any eligible borrower can apply through any participating System institution. All loan terms will be the same for everyone.

How does loan forgiveness work?

The loan amounts will be forgiven provided the following conditions are met:

- The loan proceeds are used to cover payroll costs, as well as most mortgage interest, rent, and utility costs, over the 24-week period after the loan is made.
- Employee and compensation levels are maintained.

Loan forgiveness can be provided if the employer maintains or quickly rehires employees and maintains salary levels. Under the CARES Act, loan forgiveness could be reduced if full-time headcount declines or if salaries and wages decrease. However, according to the PPP Flexibility Act, loan forgiveness will not be reduced for these reasons provided the borrowers can document any of the following conditions:

- They are unable to rehire individuals who were employees on February 15, 2020.
- They cannot hire similarly qualified employees to fill those positions by December 31, 2020.
- They are unable to restore business operations to February 15, 2020, levels because of pandemic-related operating restrictions.

Payroll costs are still capped at $100,000 on an annualized basis for each employee. However, the percentages that must be used for loan forgiveness have been amended. Under amendments made by the PPP Flexibility Act of 2020, the minimum percentage of the loan that must be used for payroll costs to receive loan forgiveness has been reduced from 75% to 60%.

Also, as explained on page 8 of the SBA's revisions to its first interim final rule (PDF), the SBA administrator, in consultation with the Treasury secretary, has interpreted the 60% minimum "as a proportional limit on nonpayroll costs as a share of the borrower's loan forgiveness amount, rather than as a threshold for receiving any loan forgiveness."

In other words, if a borrower uses less than 60% of the loan on payroll costs, he or she can still receive forgiveness on a portion of the loan. For example, if the borrower receives a $100,000 PPP loan and spends $54,000 of the loan (or 54%, which is 90% of the 60% minimum) on payroll costs, the maximum loan forgiveness he or she can receive is $90,000 (that is, $54,000 in payroll costs plus $36,000 (or 36%, which is 90% of the 40% maximum) in nonpayroll costs).

Loan payments, including principal, interest, and fees, are now deferred until the date the lender receives the loan forgiveness amount from the SBA.

What types of businesses can borrow from System institutions under the PPP?

All businesses with 500 or fewer employees may apply, including the following:

- Nonprofits
- Veterans' organizations
- Tribal business concerns
- Sole proprietorships
- Self-employed individuals
- Independent contractors

Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries. For more information, see Size standards on the SBA website. We encourage your institution to closely review size standards because many industries that the System finances are subject to more flexible size standards or use annual receipts.[4]

Guidance continues to be forthcoming from both SBA and the Treasury Department. To ensure that any PPP loans you make meet program requirements, carefully review the following resources:

- The Paycheck Protection Program page on the SBA's website
- The CARES Act Provides Assistance to Small Businesses, a page on the Treasury Department's website
- The SBA's interim final rule (PDF) announcing the PPP
- The SBA's revisions to its first interim final rule (PDF)

To properly underwrite PPP loans, it is critical for you to understand in detail the requirements and obligations of this program, given its unique nature. Failure to follow SBA guidelines and limits could cause difficulties in obtaining SBA loan forgiveness, which could result in losses to your institution.

What are the reporting requirements for loans made under the PPP?

The following reporting requirements apply for loans made under the PPP:

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[4] See 13 CFR § 121.201.

1. Notify your examiner-in-charge if you plan to participate, or are participating, in the PPP.
2. Follow the additional guidance that we provided in the supplement (PDF) to this informational memorandum.

Does the Farm Credit Act apply to loans made under the PPP?

Yes. The PPP provides an opportunity for System lenders to access SBA's loan guarantee and loan forgiveness authorities for covered loans related to payroll and certain other expenses of certain small businesses. The PPP has defined a small business to include agricultural operations.

The legislative and regulatory provisions that authorize the PPP do not change the lending authorities and requirements in the Farm Credit Act and FCA regulations (except as noted in the supplement (PDF) to this informational memorandum and in the supplement on regulatory capital for PPP loans and PPP loans pledged to the PPP Liquidity Facility (PDF)). For example, capital requirements (other than those addressed in the supplements) and requirements governing loan and borrower eligibility, territorial concurrence, and borrower rights, which are not specifically addressed in the legislation authorizing the PPP, still apply to the PPP loans made by System institutions.

We have also determined that our regulations are functionally equivalent to the Bank Secrecy Act and its implementing regulations for purposes of § 3(a)(iii)(II) of SBA's PPP interim final rule.

In addition, any loan made under the PPP would be risk-weighted at 0% under FCA's capital framework.[5] For more information, see the supplement on regulatory capital requirements mentioned above.

Questions?

If you have any questions regarding this informational memorandum, please contact Mark Johansen, Associate Director, Office of Regulatory Policy, at (703) 883-4064 (johansenm@fca.gov), or the individual listed as the contact in the supplement, as applicable.

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[5] Section 7(a)(36)(O) of the Small Business Act as amended by section 1102(a) of the CARES Act (15 U.S.C. 636(a)(36)(O)) requires that PPP loans be risk-weighted at 0% under risk-based capital requirements. In a May 28 notational vote, the FCA board adopted the 0% risk weight for PPP loans using its authority under 12 CFR § 628.1(d)(3). See the June 11 news release (PDF).