

Key Takeaways

Tennessee Bankers Association CEO Call

May 26, 2020

Key Takeaways: Tennessee Bankers Association CEO Call

The following is a summary of key takeaways discussed on the Tennessee Bankers Association's May 26, 2020 CEO Call. The discussion centered around the Paycheck Protection Program (PPP), specifically the release of the Form 1502 and processing fee payment guidance (released on May 21, 2020), as well two Interim Final Rules released on May 22, 2020 related to 1) SBA Loan Review Procedures and Related Borrower and Lender Responsibilities and 2) Requirements – Loan Forgiveness.

Takeaways on Form 1502

- The SBA has a review process in place on submission of Form 1502.
 - o Colson Services Corp., the SBA's Fiscal Transfer Agent, will notify the lender of errors in the submission and the lender has two business days to correct those after notification. Pending those errors are corrected, the SBA will initiate the process for payment on the third business day after receiving the Form 1502.
 - o How will the almost certain wave of Form 1502 submissions impact Colson's ability to process these forms timely? Can Colson identify and turn errors around quickly for the lender to keep the suggested timeline?
- Banks will need processes and controls, regardless if they using their own team and/or outsourced service providers.
 - o Submission of Form 1502: The Bank is certifying that the contents of the form are true and accurate. What is the Bank's process for verifying that the form's content is in fact true and accurate? Banks will want to avoid incorrect certifications with the SBA.
 - o Lenders will need to track all individual PPP loans, even if those loans are sold to a third-party, along with the corresponding fees owed on each of those loans.
 - o It is not likely that banks will be collecting fees on every originated PPP loan. It is expected that the SBA will deem some borrowers ineligible, either at submission of the form or after payment of this processing fee, thus putting the Bank's fee in jeopardy.
 - o Have a plan on how to account for processing fees. There is diversity in practice amongst audit firms and the FASB has not issued guidance. However, we feel the PPP processing fees meet the definition of a loan origination fee and should be deferred over the life of the loan.
 - o Bank's will have ongoing monthly Form 1502 reporting requirements, and thus must keep ongoing accounting of all outstanding PPP loans.
- Lender Service Providers (LSPs): Do you know what your LSPs are doing? How are you reviewing their work and determining it is consistent with the Bank's expectations? The Bank can outsource the function but it cannot outsource the risk.

- The SBA may clawback some processing fees. Do banks need to establish a reserve? Any reserve would need to be supportable. What support do you have to explain how you got to your reserve number?

Takeaways on Requirements – Loan Forgiveness Interim Final Rule

- The forgiveness application will confuse borrowers. Eight of the eleven pages of the application are instructions.
- Expect for banks to be interacting with their customers throughout the forgiveness process. There is conflicting guidance about the level to which banks should assist borrowers with the calculation. However, banks also need to be cognizant of customer expectations and make sure to manage those. In addition, it is important to understand the calculation, regardless of whether the review of the calculation is done internally or outsourced, to not only manage risk, but also so Bank personnel can articulate issues with their customers.
- The Rule creates an easier path for borrowers to achieve FTE and wage reduction safe harbors; however, the lender could be put in a tough position to render a decision that has a high degree of subjectivity.
- 25% of the total forgivable amount may be used on non-payroll costs.
- Owner non-cash compensation (e.g. health insurance and retirement benefits) is disallowed.
- The FTE calculation is simplified: 40+ hours equals 1 employee, less than 40 hours equals .5 employees.
- It is important to have a plan. What if most forgiveness applications, or borrower questions on forgiveness applications, come within a short window? How will the Bank handle? How much does the Bank plan to assist their customers? Some banks have discussed the possibility of holding forgiveness applications longer during the 60 day application submission period to let the dust settle.

Takeaways on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities Interim Final Rule

- The SBA expects a “good-faith” review of the forgiveness calculation to be performed by the lender. What constitutes “good-faith”? The example within the Interim File Rule states that a “minimal” review of forgiveness calculations can be done when a borrower uses a “recognized” third-party payroll processor. However, the example also states that a “more extensive review of calculations and data” would be appropriate when a lesser recognized payroll processor or source is used. This brings up concerns as it is not known how the SBA defines “good-faith”, “minimal”, “extensive”, or “recognized”. With uncertainty regarding the sufficiency of the review, how does a bank ensure an appropriate level of review on each loan is performed in light of the differing facts and circumstances present in each situation? Ultimately, each bank needs a defined process and procedure to ensure their review is sufficient and consistent across employees and LSPs.

- There is uncertainty of the extent and focus of the SBA's PPP loan reviews. The Rule states some defined items that will be requested, but there are also undefined items within the Rule. Each bank should have a process of retaining consistent documentation of review of forgiveness information, along with approval/denial support. The better the processes and procedures for documentation retention, decision making, and review, the easier the loan reviews will be.

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