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

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| **Model Policy Revised Date: February 26, 2021**  **Policy Statement:**  As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 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) – First Draw Loans**    1. ***Member Eligibility***       1. Businesses, veterans’ organizations, tribal business concerns or 501(c)(3) 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.       2. 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.       3. Any business whose principal place of business is in the United States that employees 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.       4. The business was in operation on February 15, 2020; and had employees for whom they paid salaries and payroll taxes.       5. The following would render the borrower **ineligible** for a loan:          1. Member engaged in any activity that is illegal under federal, state, or local law;          2. A household employer (individual who employs nannies or housekeepers);          3. 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 involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; or          4. 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.    2. ***Underwriting***        1. 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).       2. Verification that the business member had employees for whom they paid salaries and payroll taxes.       3. Verification of the dollar amount of average monthly payroll costs.       4. 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.       5. Completion of applicable Bank Secrecy Act (BSA) requirements, including but not limited to the Member/Customer Identification Program (M/CIP).       6. Confirmation of receipt of member’s good faith certifications contained in the Paycheck Protection Program Application form issued by the SBA.    3. ***Member Good Faith Certification***       1. 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;       2. That the uncertainty of current economic conditions makes it necessary that the loan requested is to support the ongoing operations of the eligible member;       3. Acknowledgement that 60% of the funds will be used to retain workers and maintain payroll and 40% of the loan proceeds will be used for making the mortgage interest payments, lease or utility payments;       4. 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 covered period after the loan will be provided to the lender (24 weeks);       5. 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 40% of the amount forgiven may be for the non-payroll costs;       6. 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;       7. 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       8. 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.    4. ***Loan Amount and Limits.***       1. If the eligible member was in business February 15, 2019 – December 31, 2020, the max loan is equal to:           1. Aggregate **payroll costs** from the last twelve months for employees whose principal place of residence is in the United States.          2. 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.          3. Calculate **average monthly payroll costs** (dividing the amount determined under ii. above by 12).          4. Multiply the **average monthly payroll costs** by 2.5.          5. 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).       2. ***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.*          1. *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 December 31, 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.          2. Independent contractors do not count as employees for the purpose of this loan, they have the ability to apply on their own.       3. The maximum loan size is $10 million.       4. Eligible members can only receive one loan.    5. ***Loan Proceeds – Allowable Uses***        1. Payroll costs (as defined above) **(not less than 60% of the loan proceeds);**          1. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave and insurance premiums;       2. Other costs **(not more than 40% of the loan proceeds);**          1. Interest payments on mortgage obligations (not mortgage prepayments or principal payments;          2. Rent (including rent under a lease agreement);          3. Utilities;          4. Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or          5. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.       3. 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.  Effective in 2021, the SBA will no longer deduct EIDL Advances from forgiveness payments remitted to Credit Unions for borrowers. This change will be applied to SBA forgiveness payments with a status of “Payment Confirmed” dated December 29, 2020 or later. The Credit Union will notify the borrower of conciliated payments received from the SBA for previously-deducted EIDL Advance amounts, plus interest through the remittance date. The Credit Union will notify the borrower of the reconciliation payment. The Credit Union will also re-amortize the loan and notify the borrower of the amount the next payment due or that the loan has been paid in full. Excess amounts will be remitted to the borrower.       4. 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.    6. ***Personal Guarantee / Collateral***       1. During the covered period, no personal guarantee and no collateral shall be required for the covered loan.    7. ***Interest Rate, Term and Payments***       1. Loans will be for a minimum 5-year term (for loans made before June 5, 2020, the maturity is two years; however the Credit Union and borrower may mutually agree to extend the term to five years).       2. Interest rate will be at 1% (100 basis points).       3. Payments do not have to be made for ten months following the last day of the covered period (absent an application for Loan Forgiveness).   If a loan forgiveness application is submitted within 10 months after the end of the loan forgiveness covered period, payments of principal and interest on the loan will not have to be made on the loan before the date on which SBA remits the loan forgiveness amount to the credit union.    8. ***Loan Forgiveness***       1. 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.       2. 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 over a 24-week period following the date the loan was disbursed.          1. Borrowers may seek forgiveness for payroll costs for the 24 weeks beginning on either:             1. The date of disbursement of the borrower’s PPP loan proceeds from the Credit Union (i.e., the start of the covered period); or             2. The first day of the first payroll cycle in the covered period (the “alternative payroll covered period”).          2. Payroll costs are considered paid on the day that paychecks are distributed, or the borrower originates an ACH credit transaction.          3. Payroll costs incurred during the borrower’s last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise payroll costs must be paid during the covered period to be eligible for forgiveness.          4. Payroll costs are generally incurred on the day the employee’s pay is earned (i.e., on the day the employee worked).             1. For employees who are not performing work but are still on the payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).          5. A borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for the following 24 weeks.             1. If payroll costs are incurred in this covered period, but paid after the end of this period, those payroll costs will be eligible for forgiveness if they are paid no later than the first regulator payroll date thereafter.          6. For loans disbursed before June 5, 2020, the borrower may elect to have the loan forgiveness covered period be the eight-week period beginning on the date the loan was disbursed.       3. If the borrower does not submit a loan forgiveness application to the Credit Union within 10 months after the end of the loan forgiveness covered period, the borrower must begin paying principal and interest after that period.       4. **Not more than 40% of the loan forgiveness amount can be attributable to non-payroll costs.**       5. Not less than 60% of the loan proceeds shall be used for payroll costs.       6. Amounts that have been forgiven will be considered canceled indebtedness by the Credit Union.       7. 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.       8. The member seeking loan forgiveness will apply with the credit union (SBA Form 3508 or equivalent), providing an application that will also include:          1. 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.          2. Documentation including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered payments (mortgage, lease and utilities).          3. 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.       9. For all PPP Loan Forgiveness Applications, the Credit Union will:          1. Confirm receipt of the borrower certifications within the Loan Forgiveness Application Form;          2. Confirm receipt of the documentation borrowers are required to submit to aid in verifying payroll and nonpayroll costs;          3. Confirm the borrower’s calculations on the Loan Forgiveness Application including the dollar amount of the:             1. Cash compensation, non-cash compensation and compensation to owners (claimed on lines 1, 4, 6, 7, 8, and 9 on Schedule A); and             2. Business mortgage interest payments, business rent, or lease payments, and business utility payments (claimed on lines 2, 3, and 4 of the PPP Loan Forgiveness Calculation Form).          4. Confirm that the borrower made the calculation on line 10 of the Loan Forgiveness Calculation Form correctly by dividing the borrower’s Eligible Payroll Costs claimed on Line 1 by 0.75.          5. Perform a good-faith review in a reasonable time of the borrower’s calculations and supporting documents for eligible amounts for loan forgiveness.  If errors or material lack of substantiation exists, the Credit Union will work with the borrower to remedy the issue (independent verification is not required if the borrower submits documentation to support the request for forgiveness and attests it accurately verified the payments for eligible costs).       10. The Credit Union will issue a decision to the SBA on a loan forgiveness application not later than 60 days after receipt from the borrower.       11. If the Credit Union determines that the borrower **is entitled** to forgiveness of some or all of the amount applied for, it will request payment from the SBA at the same time it issues its decision to the SBA.           1. It is up to the Credit Union to notify the borrower of the forgiveness amount.       12. If the Credit Union determines that the borrower **is not entitled** to forgiveness in any amount, it will provide the SBA with the reason for denial together with:           1. The PPP Loan forgiveness Calculation Form;           2. PPP Schedule A; and           3. (Optional) PPP Borrower Demographic Information Form       13. The Credit Union will also notify the borrower in writing that it has issued a decision denying the loan forgiveness application.       14. The Credit Union will provide a copy of the SBA’s final loan review decision to the borrower within 5 business days of the date of the decision.       15. The Credit Union will keep the borrowers informed of certain actions during the PPP loan forgiveness process. The Credit Union will notify the borrowers in writing within 5 business days of any of the following:           * 1. A decision by the Credit Union to deny forgiveness in full;             2. A decision by SBA declining a request for review by a borrower of the Credit Union’s decision to deny forgiveness in full;             3. A final SBA loan review decision, including an SBA loan review decision on forgiveness (whether approving or denying forgiveness in full or part).             4. Remittance by SBA to the Credit Union of the loan forgiveness amount, whether partial or full.    9. ***SBA Guarantee***       1. The SBA guarantees 100% of the outstanding balance, and that guarantee is backed by the full faith and credit of the United States.       2. SBA is waiving all guaranty fees, including the upfront and annual servicing fees.    10. ***Risk Weight – Regulatory Capital Requirements***        1. A covered loan shall receive a risk weight of zero under NCUA risk-based capital requirements.    11. ***Prepayment Penalty***        1. There will be no prepayment penalty for any payment made on a covered loan.    12. ***Agent Fees***        1. The Credit Union will be paid agent fees out of the fees received from the SBA.        2. Agents cannot collect fees from the borrower or be paid out of the Payment Protection Program loan proceeds.        3. 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:           1. One percent for loans of not more than $350,000;           2. 0.50 percent for loans of more than $350,000 and less than $2 million; and           3. 0.25 percent for loans of at least $2 million.    13. ***Secondary Market***        1. After the loan is fully disbursed, it may be sold on the secondary market.        2. A PPP loan may be sold at a premium or discount to par value.        3. SBA will issue guidance regarding any advance purchase for loans in the secondary market.    14. ***Advanced Purchase***        1. 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.        2. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs (60%), covered mortgage insurance, covered rent, and covered utility payments (40%) during the 8-week period.        3. The Credit Union will submit a report requesting advanced purchase with the expected forgiveness amount to the SBA including:           1. PPP Application Form and supporting documentation;           2. 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;           3. 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           4. Any additional information the SBA may require to determine whether the expected forgiveness amount is reasonable.    15. ***Loan Increase Eligibility***        1. Borrowers who received a PPP loan under this section may reapply for another first-draw loan or request an increase to a first draw PPP loan that was approved on or before August 8, 2020.        2. If the SBA has already submitted a forgiveness payment to the Credit Union, no loan increase or reapplications are allowed (borrower may be eligible for a Second Draw PPP loan).        3. For Seasonal Employers, Farmers and Ranchers, there may be eligibility for a higher maximum loan amount based on a revised formula.        4. An eligible borrower may reapply for a new First Draw PPP loan (in amount eligible based on the current rules) if for the First Draw PPP loan:           1. The Credit Union reported to the SBA before December 27, 2020 that the borrower fully repaid the loan and the SBA has not remitted a forgiveness payment.           2. The Credit Union report to the SBA before December 27, 2020 that the borrower returned (or repaid) part of the loan and the SBA has not remitted a forgiveness payment.           3. The borrower did not accept before December 27, 2020 the full amount of the loan that it was approved for and the SBA has not remitted a forgiveness payment.        5. The Credit Union will comply with the loan amount underwriting requirements.        6. The Credit Union will disburse loan increases or reapplications in a single disbursement within 10 calendar days of successful processing. 2. ***PPP Loan - Second Draw***    1. ***Eligibility***        1. Borrowers are eligible if they previously received a first draw PPP loan and has (or will) used the full amount only for authorized uses;       2. Has no more than 300 employees; and       3. Can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.    2. ***Loan Amounts and Limits***       1. For most borrowers the maximum loan amount is 2.5 times average monthly 2019 or 2020 payroll costs, up to $2 million.       2. For borrowers in the Food Services sector (NAICS 72), the maximum loan amount is 3.5 times average monthly 2019 or 2020 payroll costs up to $2 million.    3. ***Effective Date***       1. Applications will be accepted from borrowers until March 31, 2021. 3. **Emergency Economic Injury Disaster Loans (EIDL)**    1. The CARES Act has expanded the eligibility for access to EIDLs to include:        1. A business with not more than 500 employees;       2. Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;       3. A cooperative with not more than 500 employees;       4. An employee Stock Ownership Plan organization with not more than 500 employees; or       5. A tribal small business concern with not more than 500 employees.    2. The list of eligible entities also now includes private non-profit organizations and small agricultural cooperatives.    3. 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.      1. **SBA Loan Relief Program**    1. This relief program will apply to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans.    2. SBA will cover all loan payments on these loans, including principal, interest and fees, for six (6) months. 2. **SBA Loan Deferment Program**    1. 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.    2. 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) including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the Credit Union. 3. **SBA Express Loans**    1. Express Loans offered under SBA 7(a) programs are available for a maximum of $1,000,000 until October 1, 2021, when the maximum is $500,000. The loan guarantee on 7(a) loans is increased to 90%. For loans $350,000 or less, effective on January 1, 2021 the loan guarantee increases to 75%. Upon expiration (October 1, 2021) the loan guarantee is decreased back to 50%. |
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