



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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Industry Guidance Regarding U.S. Small Business Administration’s Paycheck Protection Program (PPP) and Legal Lending Limits for Massachusetts Chartered Banks and Credit Unions

The Massachusetts Division of Banks (Division) is issuing this supervisory guidance relative to loans made pursuant to the “Paycheck Protection Program” under the U.S. Small Business Administration’s (SBA’s) 7(a) Loan Program. Specifically, the Division seeks to clarify the supervisory approach that it will follow in evaluating loans made under the Paycheck Protection Program relative to the limitation on the total obligations of one borrower or member (legal lending limit) for Massachusetts-chartered banks and credit unions pursuant to Massachusetts General Laws chapter 167E, section 6 and chapter 171, section 58, respectively.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or Act) was signed into law to provide emergency assistance to individuals, families, and businesses affected by the Coronavirus Disease 2019 (COVID-19) pandemic. The SBA received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency. Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans that are made under the new “Paycheck Protection Program” (PPP). Section 1106 of the Act provides forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

On April 2, 2020, the SBA issued an Interim Final Rule to provide guidance for the implementation of the PPP, which applies to small business loan applications submitted through June 30, 2020, or until funds made available for this purpose are exhausted.

The Division recognizes that many supervised Massachusetts-chartered depository institutions have already undertaken significant efforts to assist their customers in response to the COVID-19 emergency and that many institutions have expanded their response efforts by participating in the PPP. The Division is aware that as supervised institutions have evaluated their ability to participate in the PPP, they have appropriately raised questions about the potential legal lending limit implications of granting PPP loans to an individual borrower or member where the institution is already at or near the legal lending limit for that individual. Therefore, for the purpose of

encouraging and facilitating the extension of emergency financial assistance to small businesses consistent with the CARES Act, the Division has determined that loans made specifically under the PPP will not be considered as the basis for an adverse regulatory finding or enforcement action for violation of the legal lending limit. Similarly, to the extent that such a PPP loan would cause the institution to exceed the lending limit established by its own internal policy, which may be an amount less than the legal lending limit established by the Massachusetts law, such exception to exceed the maximum borrowing amount would not be criticized in the findings of an examination as a variation from the institution's lending policy.

Institutions should note that this supervisory exception to the legal lending limit is being granted specifically for, and only to the extent of, the PPP loan amount. While the Division will not treat amounts attributable to the PPP loans that exceed the loan to one borrower limitations as a violation of the legal lending limit, the aggregate non-PPP borrowing relationships with the borrower should remain below the institution's legal lending limit amount.

At this time it is important to underscore the multiple purposes that are intended to be served by the loan to one borrower limitations. In addition to protecting the safety and soundness of the institution, the legal lending limit is intended to encourage equitable access to banking services. In light of the COVID-19 emergency, equitable access to banking services is as important as ever when so many small businesses are in such critical need of assistance. While many supervised institutions already participate in existing SBA 7(a) programs and are actively engaged with customers seeking relief under the PPP, for other institutions looking to respond to the community need, their participation in the PPP will be their initial engagement as a SBA lender. The Division recognizes that in the initial days since the PPP's launch on Friday, April 3rd, institutions are working to address the emergency needs of their customers. However, in anticipation of the overwhelming small business demand for the PPP, the Division encourages its supervised institutions to consider collaborative efforts for PPP participation. For example, the Division would encourage institutions already engaged in processing PPP loans to reach out to other Massachusetts institutions who may have little to no SBA experience to pursue collaborations, such as implementing a system of referral partnerships for PPP applicants. These collaborations would enhance the ability of experienced SBA lenders in Massachusetts to leverage their knowledge and expertise and ultimately maximize the assistance available to all impacted small businesses in the Commonwealth.

If you should have any questions, please contact Deputy Commissioner James A. Barrett at 617-367-4401 or james.a.barrett@mass.gov.

Very truly yours,

Mary L. Gallagher
Commissioner of Banks