SBA Procedural Notice

TO: All SBA Employees and Paycheck Protection Program Lenders

SUBJECT: Paycheck Protection Program Excess Loan Amount Errors

CONTROL NO.: 5000-20078

EFFECTIVE: January 15, 2021

This Notice informs Paycheck Protection Program (PPP) lenders of the effects of "excess loan amount errors" made by the borrower or the lender in completing the PPP Borrower Application Form (SBA Form 2483, SBA Form 2483-SD, or lender's equivalent form) or the PPP Lender Application Form (SBA Form 2484 or SBA Form 2484-SD) for First Draw PPP Loans and Second Draw PPP Loans (collectively, "PPP loans").

An excess loan amount error is a borrower or lender error made in good faith that caused a borrower to receive a PPP loan amount that exceeds the borrower's correct maximum loan amount under the CARES Act and the Economic Aid Act.[1] An excess loan amount error does not include a knowing misstatement. Knowing misstatements may result in additional action, such as charges for fraud.

> ***Example 1: Borrower Error***: Borrower mistakenly failed to subtract amounts paid to employees in excess of $100,000 (annualized and prorated) from reported payroll costs, as required by the CARES Act and Economic Aid Act. Lender performed a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll costs, and did not identify an error in the borrower's calculation of its payroll costs. As a result, the loan amount approved for the borrower exceeded the borrower's maximum loan amount.

> ***Example 2: Borrower Error***: Borrower mistakenly included payments to an independent contractor in its calculation of payroll costs on its PPP Borrower Application Form. Lender performed a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll costs and did

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[1] 15 U.S.C. 636(a)(36)(E) and (37)(C).

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not identify the error. As a result, the loan amount approved for the borrower exceeded the borrower's correct maximum loan amount.

Example 3: Lender Error: Borrower applied for and was eligible for a $25,000 PPP loan. Lender inadvertently approved borrower for a $35,000 loan due to a lender employee data input error. As a result, the borrower's approved loan amount exceeded the borrower's correct maximum loan amount.

What is the effect of an excess loan amount error on loan forgiveness?

A borrower may not receive loan forgiveness for any amount that exceeds the correct maximum loan amount permitted by statute for that borrower.[2] This is true whether the excess loan amount was caused by borrower error or lender error.

When preparing or reviewing a loan forgiveness application, if a borrower or lender identifies an error that resulted in a borrower receiving a larger PPP loan than the borrower was eligible to receive, the lender must issue a decision to SBA denying forgiveness for the amount that exceeded the borrower's correct maximum loan amount.[3] If an excess loan amount error is discovered after the lender has already submitted a forgiveness decision to SBA, the lender should promptly request the withdrawal of the lender loan forgiveness decision by notifying SBA through the SBA Paycheck Protection Platform. The lender may then submit a new lender loan forgiveness decision for the correct amount through the SBA Paycheck Protection Platform. A borrower must repay any unforgiven portion of a PPP loan.[4] If a lender discovers an excess loan amount error after SBA has issued a final loan forgiveness decision and remitted payment, lender must promptly notify the borrower and SBA through the SBA Paycheck Protection Platform.

What is the effect of an excess loan amount error on the SBA's loan guarantee?

Borrower Error. If an excess loan amount error is due solely to the borrower's error in completing the loan application form, the borrower error does not invalidate SBA's guarantee of the PPP loan.

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[2] *See, e.g.,* 85 Fed. Reg. 33012 ("[I]f SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or part, as appropriate."); 85 Fed. Reg. 38306 ("If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application … the loan will not be eligible for loan forgiveness.").

[3] *See* 85 Fed. Reg. 33012; 85 Fed. Reg. 38306. The lender's loan forgiveness decision should also deny forgiveness for any other portion of the loan if required under the PPP rules that have been issued by the Small Business Administration (SBA) and the Department of the Treasury implementing the Paycheck Protection Program, including Second Draw Paycheck Protection
Program Loans, under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

[4] 15 U.S.C. 636(a)(36)(K).

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For example, if a borrower received a PPP loan amount that exceeds its correct maximum loan amount because the borrower incorrectly calculated its payroll costs and a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost by the lender did not identify the error, the SBA guarantee would remain in effect. However, excessive occurrences or patterns of undetected borrower errors may indicate a lender did not perform a good-faith review of borrowers' calculations or supporting documents concerning average monthly payroll costs and could be grounds for further review of the lender by SBA, which could affect the guarantee.

Lender Error. If an excess loan amount error is due in whole or in part to the lender's failure to satisfy its obligations under PPP rules[5] (as further explained in FAQ 1) and the document collection and retention requirements described in the lender application form (SBA Form 2484 and SBA Form 2484-SD), the SBA guarantee will not apply to the excess loan amount. For example, if the lender approved a borrower for a loan amount for which the borrower did not submit payroll documentation, it indicates that the lender did not satisfy its PPP lender obligations (as further explained in FAQ 1) and the document collection and retention requirements described in the lender application form (SBA Form 2484 and SBA Form 2484-SD) with respect to the loan. Accordingly, the SBA guarantee would not apply to the portion of the loan amount that exceeds the borrower's correct maximum loan amount.

What is the effect of an excess loan amount error on a borrower's obligations?

If the lender or SBA, as applicable, determines a borrower was ineligible for any portion of its loan amount, forgiveness will be denied for the ineligible portion and the borrower must begin making payments on the remaining loan amount.[6] Any unforgiven loan amounts remain obligations of the borrower, even if the borrower was ineligible to receive some or all of the loan.

Questions:

Lenders may call the Lender Hotline at (833) 572-0502 for live assistance regarding platform access and support, policy questions and procedures, and Capital Access Financial system (CAFS) and SBA's Electronic Transmission (E-Tran) systems support. Lenders may direct loan-specific inquiries to the SBA Paycheck Protection Platform inbox; general PPP forgiveness questions to PPPForgivenessRequests@sba.gov; requests for advanced technical support, API support and UAT error support to developer@ussbaforgiveness.com; and requests for assistance on SBA Paycheck Protection Platform navigation and platform user experience issues to help@ussbaforgiveness.com.

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[5] These obligations are described in the initial PPP Interim Final Rule (85 Fed. Reg. 20811), subsection C.3. of the consolidated PPP Interim Final Rule (posted on SBA's website Jan. 6, 2021) and subsection (h)(2) of the second draw PPP Interim Final Rule (posted on SBA's website Jan. 6 2021) (collectively, PPP lender obligations).

[6] *See* 85 Fed. Reg. 38310-11; *see also* subsection B.9. of the consolidated PPP Interim Final Rule (posted on SBA's website Jan. 6, 2021).

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Questions concerning this Notice may be directed to the Lender Relations Specialist in the local SBA Field Office, which can be found at https://www.sba.gov/tools/local-assistance/districtoffices.

Jihoon Kim
Director
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