

### SBA Publishes Guidance and Resources on Section 7(a) Paycheck Protection Program Loans Application Certifications

Bodman attorneys are closely monitoring and analyzing issues relating to the recently released SBA PPP loan application, and answering many questions from clients, including financial institutions, on its content. In our continuing effort to provide guidance in this developing area, we are providing notes on each of the application's required certifications. The borrower application form can be found [here](#).

The full SBA guidance in the Interim Final Rule published on Thursday, April 2nd can be found [here](#).

In addition, the SBA's PPP Loan Information website includes regular updates and ongoing guidance on related matters. It can be found [here](#).

#### Required Certifications

The SBA PPP application requires eight separate certifications. Each certification must be made in good faith by an authorized representative of the applicant who is legally authorized to certify on behalf of the borrower. The specific certifications appear on page two of the application, and are reprinted below in their entirety.

First, it is important to note that several certifications are unclear and therefore causing concern for both lenders and prospective borrowers. We expect additional guidance from the SBA, but in the meantime the following certifications include unclear standards and should be closely reviewed by both borrower and lender. We encourage you to take note of the following observations from Bodman attorneys:

- “To the extent feasible, I will purchase only American-made equipment and products.”
  - **Bodman note:** It is unclear whether this allows an applicant to purchase any non-American-made equipment or products and what makes that requirement “feasible” versus impractical.

- “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
  - **Bodman note:** It is unclear whether this imposes a need-based standard for PPP loans or what “necessary” means in the context of “support... ongoing operations.”
- “I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.”
  - **Bodman note:** There is currently no clear guidance on how loan expenditures will be reported and forgiveness calculated.
- “I will comply, whenever applicable, with the civil rights and other limitations in this form”
  - **Bodman note:** If no limits are set forth in the application, at a minimum we expect general compliance with law requirements to apply.

*Page 2 of the application includes the following:*

#### CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant’s industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

\_\_\_\_\_ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

\_\_\_\_\_ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

\_\_\_\_\_ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

\_\_\_\_\_ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

\_\_\_\_\_ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

\_\_\_\_\_ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

\_\_\_\_\_ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

\_\_\_\_\_ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Please contact your Bodman attorney or Brian Kersey at 616-205-3129 or [bkersey@bodmanlaw.com](mailto:bkersey@bodmanlaw.com) or Darren Burmania at 616-205-3313 or [dburmania@bodmanlaw.com](mailto:dburmania@bodmanlaw.com) for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.