SERVICE SHEET

CARES Act Paycheck Protection Program – Risk Areas for Lenders

As the U.S. takes measures to stabilize the economy after the pandemic-initiated shutdown, much attention has been focused on the Small Business Administration (SBA) Paycheck Protection Program (PPP) which is intended to help businesses bridge gaps from lost revenues. Financial institutions were not granted blanket immunity in administering and approving loans under the program. Recent guidance clarifies that financial institutions may rely on the authenticity of borrower-supplied documentation, however, financial institutions are still responsible for exercising "good faith" efforts to confirm borrowers' calculations for eligible loan amounts and loan forgiveness eligibility. Financial institutions need to fully understand the risks of administering these public funds.

Challenges for Financial Institutions

Given the timeline financial institutions were provided to stand up the program, combined with compliance and internal audit departments that are already stretched thin with ongoing priorities, it is no wonder that financial institutions are dealing with significant challenges in implementing the program expeditiously and within its parameters. Many financial institutions have diverted resources from their normal roles and responsibilities in order to process the thousands of applications that have been received. In some instances, these resources have been diverted from other supervisory roles and those other programs might suffer gaps in compliance oversight and monitoring.

Added to this, many bank employees are working from home under government-mandated stay-at-home orders and are struggling to perform day-to-day tasks in less-than-optimal home environments with limited equipment and IT system resources. Employees that typically have multiple monitors at designated workstations in the office are making do with portable laptops while working at their kitchen tables. These challenges are magnified with the additional burden of administering the SBA PPP.

WHERE WE CAN HELP

- Performing assessments of each of the key risk areas
- Conducting independent testing
- Document management services
- Provide litigation support including largescale data analytics
- Supplementing surveillance and monitoring teams with additional staff

Oversight and Litigation Lay Ahead

Loan administrators should anticipate that there will be external audits and government review of the program and how it was administered by the participating financial institutions. In addition, litigation filings have already started appearing against participating financial institutions and are expected to continue from many angles over the years to come.

To prepare for these outcomes, firms should be aware of some key risk areas, such as:

— **Loan Acceptance and Processing** – ensuring appropriate documentation was reviewed and retained as part of the approval decision to support who was approved, on what basis, and for what amount. As well as ensuring the appropriate due diligence was completed on any new customers onboarded.

— **Loan Underwriting** – ensuring loan evaluations conform to fair lending requirements that protect against discrimination of protected classes such as race, color, religion national origin, etc.

— **Funding of the loan** – verifying that the loan was funded in the amount approved

— **Servicing of the loan** – verifying interest accrual, processing and applying borrower payments, delinquencies, etc.

— **Loan exits** – including review of loan forgiveness applications, approval decisions and documentation, and processing of paid-in-full loans

— **Denied loans** – retaining documentation to support the review and basis for denial

— **Program misappropriation** – verifying that the funds received by the financial institution were utilized for the SBA PPP and not diverted to other programs or employee fraud

In anticipation of oversight and litigation, financial firms should also consider proper documentation of risk considerations, decisioning and any adjustments made to the approach. Also, firms should stay abreast of subsequent rounds of funding and create controls that align with changes in program requirements and guidelines. Less commonly, firms will need to address specific risks if they decide to sell the loans or outsource their loan servicing to a third party.

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