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Guidelines Issued for Financial Institutions Making Small Business Loans under the CARES Act Paycheck Protection Program

April 1, 2020

The Treasury Department has released initial guidelines for the CARES Act Paycheck Protection Program (the "Program"), including information on how banks and credit unions who are not currently certified lenders under the Small Business Administration ("SBA") may participate in the Program.

The Program, which was part of the $2.2 trillion stimulus package signed into law on March 27, 2020, will provide up to $350 billion in funding for loans to help small businesses affected by COVID-19 that may be fully forgivable, as explained below. The Program will be administered through the SBA. It is currently open to existing SBA-certified lenders and is available to financial institutions who are not currently certified, provided the institution applies for and receives approval. Approved lenders may begin processing loan applications as soon as April 3, 2020.

The guidelines that were released include an overview of the Program, information sheet for lenders, information sheet for borrowers, and the application form. A summary of the guidelines for lenders is set forth below.

The guidelines establish that all existing SBA-certified lenders already possess the authority to process Program loans. All federally-insured depository institutions, federally-insured credit unions, and Farm Credit System institutions who are not currently SBA-certified lenders are also eligible to participate in the Program, but must be approved and enrolled in the Program. A lender seeking enrollment must submit its application to the SBA at DelegatedAuthority@sba.gov. The initial guidelines did not include a form of application or any further information on how an institution can become approved.

The guidelines provide information regarding the type of underwriting that is required. A lender making a loan under the Program must follow applicable Bank Secrecy Act requirements and will need to verify the following:

- The borrower was in operation on February 15, 2020
- The borrower had employees for whom the borrower paid salaries and payroll taxes
- The dollar amount of average monthly payroll costs

The guidelines also set forth how lenders will be compensated. Lenders are not permitted to collect any fees from the applicant. Processing fees will be based on the balance of the financing outstanding at the time of final

disbursement:

- Loans $350,000 and under: 5.00%
- Loans greater than $350,000 to $2 million: 3.00%
- Loans greater than $2 million: 1.00%

Agent fees will be paid out of lender fees. The lender will be responsible for paying the agent. Agents may not collect any fees from the applicant. The guidelines define the term “agent” to include, among others, an attorney, accountant, consultant, and loan broker. It sets agent fees as follows:

- Loans $350,000 and under: 1.00%
- Loans greater than $350,000 to $2 million: 0.50%
- Loans greater than $2 million: 0.25%

The guidelines confirm that the SBA guarantees 100% of the outstanding balance and waives all SBA guaranty fees, including the upfront and annual servicing fees. These Program loans may also be sold in the secondary market and the SBA will not collect any fee for guarantees sold into the secondary market. The term of such loans is two years, and all payments are deferred for six months (interest will continue to accrue over this period).

These loans will be fully forgiven if the borrower meets certain requirements, such as using the funds for payroll costs, interest on mortgages, rent, and utilities (at least 75% of the forgiven amount must have been used for payroll), as well as maintaining staff and payroll. The guidelines for borrowers provide that a request for forgiveness may be submitted to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. Borrowers must certify that the documents are true and that the forgiveness amount was used to keep employees and make eligible mortgage interest, rent, and utility payments. Lenders must make a decision on the forgiveness within 60 days of the borrower’s request.

We will continue to monitor this rapidly changing environment and provide updates as necessary. If you have any questions regarding the Paycheck Protection Program or a financial institution’s application to participate in, or obligations under, the Program, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

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