



WEST VIRGINIA DIVISION OF FINANCIAL INSTITUTIONS

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Dawn E. Holstein
Commissioner

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ADVISORY NOTICE REGARDING PAYCHECK PROTECTION PROGRAM LOANS AND THE LEGAL LENDING LIMIT

West Virginia Code §31A-4-26(a)(4)(E) provides an exception to the legal lending limit for banks where loans or extensions of credit are “secured by unconditional takeout commitments or guarantees of any department, agency bureau, board, commission or establishment of the United States” The legislative rule implementing this provision (106 CSR 9-6.5) provides additional criteria to be considered when relying upon this exception as follows:

- (1) The exception only applies to the that portion of the loan or extension of credit that is covered by the SBA guarantee.
- (2) The commitment or guarantee shall be payable to cash or its equivalent within sixty (60) days after demand for payment is made.
- (3) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank’s control. Protection against loss is not materially diminished or impaired by procedural requirements, ...a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

The interim final rules implemented by the Small Business Administration (“SBA”) pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) prescribe special conditions for banks making loans in accordance with these provisions. The CARES Act temporarily permits the SBA to guarantee 100 percent of 7(a) loans made under the Paycheck Protection Program (“PPP”) and allows for forgiveness up to the full principal amount of qualifying loans. Moreover, the interim final rule provides that a bank may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of loans at the end of week seven of the covered period as defined in the law. When the bank has submitted all of the required documentation for the purchase amount in the format and with content required by SBA, the SBA has indicated that it will purchase the expected forgiveness amount of the PPP loans within 15 days of the date on which a complete report is received. Finally, the SBA has provided that lenders should comply with the lender obligations in the interim final rule, but it will hold lenders harmless where a borrower fails to comply with program criteria.

Based upon the forgoing representations made by the SBA in its interim final rule, ***the Commissioner has determined that the guarantee exception to the legal lending limit found at W. Va. Code §31A-4-26(a)(4)(E) applies for loans made in compliance with the Paycheck Protection Program.*** If the SBA amends its interim final rule at any time, the Commissioner will review that updated rule to determine continued applicability of the exception for any PPP loans made after amendment of the SBA interim final rule implementing the PPP.

A handwritten signature in cursive script, reading "Dawn E. Holstein".

Dated: April 9, 2020

Dawn E. Holstein, Commissioner