



MORTGAGE BANKERS ASSOCIATION

April 8, 2020

The Honorable Steven T. Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Jovita Carranza  
Administrator  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416

**RE: SBA 2020-0015 – Policy Guidance on Business Loan Program Temporary Changes; Paycheck Protection Program.**

The Mortgage Bankers Association (MBA)<sup>1</sup> is writing this letter in response to the request for comments on guidance issued in SBA 2020-0015<sup>2</sup>. We appreciate efforts that have been made by the government to ensure that businesses are equipped with the necessary funds to continue to maintain employees and keep their businesses running in these especially difficult times. Without a doubt, COVID-19 is causing unprecedented difficulties for all businesses, and smaller businesses are definitely feeling its impact more than anything else. Hence, MBA supports the Paycheck Protection Program (the “PPP”), and stands ready to work with the Treasury Department (Treasury) and the Small Business Administration (SBA) to ensure that Congress’ goal of getting necessary funds to “small business concerns”, including independent mortgage companies engaged in the business of originating and selling mortgage loans, under the PPP is met.

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<sup>1</sup>The MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mba.org](http://www.mba.org)

<sup>2</sup> SBA Interim final rule providing guidance on the implementation of Paycheck Protection Program (sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act)). Section 1102 of the Act temporarily adds the Paycheck Protection Program to the SBA’s 7(a) Loan Program.

In SBA 202-0015, Treasury provided a section addressing “ineligible borrowers” under the PPP<sup>3</sup>, which references already existing guidance on SBA’s 7(a) Loan Program – SOP 50 10 5(K).<sup>4</sup> This existing guidance specifically states that businesses engaged in lending - including banks, life insurance companies, finance companies, investment companies, or other businesses whose stock in trade is money and which are engaged in financing – are ineligible borrowers under the SBA 7(a) loan Program. According to this guidance, however, there are limited circumstances under which certain businesses engaged in lending may be eligible, including a mortgage company that services loans. Specifically, the guidance provides that “[a] *mortgage servicing company that disburses loans and sells them within 14 calendar days of loan closing is eligible. Mortgage companies primarily engaged in the business of servicing loans are eligible. Mortgage companies that make loans and hold them in their portfolio are not eligible*”

Clearly, mortgage companies that are primarily engaged in servicing are eligible borrowers under the PPP. However, while the guidance states that mortgage companies that originate and sell loans are also eligible borrowers, the requirement that the loans be sold within 14 days of closing creates a situation that could make some of the intended beneficiaries ineligible.

As a general matter, the business model of an independent mortgage bank (IMB) is origination and subsequent sale of mortgage loans. These companies do not make loans and hold them in their portfolios in the ordinary course of their businesses (i.e., these loans are held in available-for-sale, rather than held-to-maturity, portfolios). In most cases, these loans are sold into the secondary market well within 14 days of closing. There are cases, however, where the loan sales are not completed within 14 days. Sometimes loans being aggregated for bulk sale, or hard to place loans, may be retained or held on warehouse lines of credit for more than 14 days.

Regardless of the time between closing and sale of the loans, the fact is that in the ordinary course of business the vast majority of loans are sold in less than 14 days, and even those held beyond 14 days are rarely held to maturity. In fact, the only way for nondepository mortgage bankers to stay in business is to sell virtually all of the loans they originate – most of the time within a few days after closing, but on occasion these loan sales take longer.

MBA urges the Treasury and SBA to issue guidance to clarify the 14-day sale requirement for purposes of determining mortgage company eligibility under the PPP. We ask that the guidance specifically state that mortgage companies that originate and sell loans “in the ordinary course of their business” would be eligible borrowers under the PPP – without regard to whether every single loan is actually sold within 14 days.

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<sup>3</sup> “Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA’s Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at <https://www.sba.gov/document/sop50-10-5-lender-development-company-loan-programs>.)”

<sup>4</sup> In effect, SBA 2020-0015 adopts the borrower eligibility section of the SBA 7(a) Loan Program for purposes of establishing eligibility for the PPP.

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This guidance is critical for MBA member IMBs that meet the employee threshold requirement under the PPP and need the funds, just like other small businesses, to pay employees during the crisis and continue operations that help support vital real estate housing finance needs for mortgage borrowers.

MBA urges the Treasury and SBA to take into consideration the purpose and goals of the PPP, which is an emergency program intended to help businesses that need immediate funds to retain employees and keep their businesses open despite the difficult economic conditions that have arisen due to COVID-19. Clarifying the 14-day sale requirement will allow IMBs qualify for the PPP, thereby ensuring that the vital role these institutions play in the economy will not be disrupted.

Thank you for your time and attention to this very important matter. Please feel free to contact Pete Mills at [pmills@mba.org](mailto:pmills@mba.org) or (202) 557-2878 if you have any questions or would like to discuss this in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. D. Broeksmit', with a stylized flourish at the end.

Robert D. Broeksmit, CMB  
President and Chief Executive Officer  
Mortgage Bankers Association