

CLOSING TRANSACTIONS IN TODAY'S LENDING MARKET

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By Steve Mariani

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Let's face it, a lot has happened in 2020, and now that the year is coming to a conclusion, I think we're all happy to begin moving forward again. Although I cannot predict what 2021 will look like or how much business we'll each be able to conduct, I do want to share some of current lending market updates that we're aware of as of the end of 2020.

Hopefully, you were able to close one, two, or even more transactions prior to the September 27 deadline under the C.A.R.E.S. Act and secure six free payments for your clients. I can speak for many of our broker offices and some experienced record months. Just in our office alone, we closed just under \$17 million dollars the last nine days of September, a record few days for us as well.

That said, here is where we are today with a few ways we can continue to close SBA loans. If you've been following along these last few months then you should be aware of the six page SBA Procedural Notice issued on October 2 (we are very happy it was not sooner) outlining the steps to close an SBA transaction loan that already has a P.P.P. loan in place (all referenced documents can be [found here](#)). This notice outlines the specific guidelines we must follow to remain in compliance with SBA and still allow an acquisition loan to close.

Today I want to bring a few additional items to everyone's attention as many lenders, borrowers, and brokers work through the actual logistics demanded by this notice. The first thing to note is that SBA considers a stock or asset sale as one and the same under these guidelines when the seller has a P.P.P. loan outstanding. Initially, we witnessed a few closings under asset purchase scenarios where the consensus was that the seller left with his corporation and therefore the corresponding P.P.P. loan liability. This was an incorrect assumption was soon off the list of possible options.

The next item I received clarification on was in relation to the requirement stating an escrow account must be set up in an interest-bearing account to be controlled by the sellers P.P.P. lender. The account must have a balance equal to the total outstanding P.P.P. loan. We had originally interpreted this to mean that the P.P.P. lender must be in possession of the escrow account and have control. We later learned that any escrow agent can establish this account, provided that the P.P.P. lender remains in full control, as required by the rule. This is an easier task than convincing many P.P.P. lenders of the alternative. Note that the P.P.P. lender will have to acknowledge this account and will have to provide some level of consent.

The P.P.P. escrow account funds are also the next concerning factor and source of many additional questions we receive. In the fine print (not included in the body of the notice) it states that the funds equal to the amount of the outstanding P.P.P. loan to be deposited into the escrow account must NOT come from the SBA loan proceeds. We have witnessed this many times as we closed loans prior the issuance of this notice using seller closing proceeds. That stopped on October 2.

Basically, this policy now demands the seller (or funds from elsewhere) to inject his own personal monies into this account. Something to note is that these escrow funds are not sourced as typical SBA down payment funds are and there is no requirement for the seasoning of these escrow funds.

When it comes to the lenders and the main street lending markets nationwide, I see many changes on the horizon. Many COVID-19 related fears have come to be a reality and underwriting criteria seems to change daily at many of the larger national lenders. We are seeing lenders creating "blacklists" again, which outline the industries they will no longer consider. Some are basing this on their internal comfort levels and previous portfolio performance. Understanding that in normal times lenders do use the current market conditions and internal portfolio default ratios to determine the aggressiveness of their underwriters, but these days we see fear creeping into many outcomes and changing the results, sometimes at the eleventh hour.

We also noted that some SBA lenders wrote massive quantities of P.P.P. loans to increase short term profits, an avenue we immediately recognized and noted. The reason we took note of those high volume P.P.P. lenders was that we understood the

resources required to produce such volume, and expected their SBA commitment to be, at a minimum, temporarily refocused to this product. We were correct.

Today's market is less consistent than it has been in many years as we see lender's approval criteria to be more fluid and erratic. COVID-19 acquisition questionnaires have been created and required as the country moves through this pandemic and must be addressed prior to underwriting. Lenders view the effects on a case by case, state by state basis. Many of these businesses were closed by law for months at a time with no alternatives to producing revenues, and, in some states, are expecting to close again.

The good news is, as some lenders tighten due to fear-based decisions, others understand the need to assist on Main Street and have stepped up to help. Many understand this current condition and are making concessions based on the history and revenue trends of the business to find ways to reach approvals.

The letters and documents mentioned above can all be [found here](#) or on [our homepage](#) under the COVID-19/Webinar Resources button. As always, our highly skilled Diamond Financial staff is here to answer any specific questions regarding SBA transactions at any time. For more specific answers on these or any other SBA rules, please contact us at askdiamond@easysba.com, a no cost, no obligation, email solution to answer all of your SBA questions.

Diamond Financial specializes in larger goodwill transactions and we are always happy to share the information that makes them happen.

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Wishing each of you a safe, happy and healthy Thanksgiving holiday.