



## How Can I Demonstrate My PPP Loan is “Necessary to Support On-Going Operations”?

When dealerships applied for loans under the Federal Paycheck Protection Program (“PPP”), they certified that **“current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”** This certification has recently come under scrutiny as the SBA released guidance responding to criticism that some publicly-held companies received PPP loans, potentially at the expense of other small business owners. The SBA guidance states that large companies should take into account, “their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.” The guidance further indicates that the SBA will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the business’ loan forgiveness application. The SBA further indicated that businesses who feel they do not meet the certification may return the funds by May 7, 2020 without consequences, which has now been extended to May 14, 2020.

So, what can a dealership do now to document their need for a PPP loan? We suggest that dealers answer the following questions and gather supporting documentation, such as financial statements, payroll records, termination/layoff notices, and return to work notices to assist in answering any inquiry or applying for forgiveness of their PPP loan.

### I. Certification & Guidance

The application requires certification of the following standard:

The loan request was necessary to support the ongoing operations of the applicant. The SBA Guidance expands this standard with a two-prong test, stating that a business should take into account:

1. Their current business activity;
2. Their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not **“significantly detrimental to the business”**.

The Guidance then offers the following example:

“For example, it is unlikely that a public-held company with substantial market value and access to capital markets will be able to make the required certification in good faith.”

### II. Certification Documentation

While most dealerships are not public companies, we believe dealerships should document the **“economic uncertainty”** that was in effect at the time of the dealership applied for the loan.

1. Reference that Kansas was operating under a Stay at Home Order effective March 30 to May 3, 2020, impacting all Kansans opportunities to work, shop, travel or go to school. For dealerships in some counties, local Stay at Home Orders began on March 24, 2020. Document the following impact of the Order on your business?
  - What was your sales volume as compared to your pre-COVID 19 sales volume?
  - What was your service volume during this same time frame?
  - What was your parts volume during this same time frame?
  - Did you close down or limit any operations of your business?
  - Did you lay off, furlough, or terminate any of your employees prior to applying for the PPP loan?
  - Did you reduce employee pay or benefits?
  - Were you forecasting layoffs, furloughs, or terminations of employees due to forecasts of lower sales/service?
  - Did employees ask for leaves of absence due to illness, child care, or healthcare concerns?
  - Did your dealership extend healthcare benefits to employees on temporary layoffs? If so, were you anticipating ending those benefits?
2. Dealerships should identify/document how PPP loan proceeds will be or were used to support business operations and employees. Uses may include:
  - Employee Retention
  - Continuation of Benefits (health insurance, retirement benefits, ancillary benefits)
  - Re-hiring employees
  - Maintaining employee wages
  - Paying rent, utilities, and other PPP-approved expenses
3. How PPP Funds Affect Your Employees, Your Dealership, and Your Current Business Activity?
  - If it was not for the PPP loan, would your revenue support the number of employees you employ or have reinstated after layoff?
  - Would you be anticipating future layoffs or changes to future benefits such as increasing employees' share of health insurance had it not been for the PPP loan?
4. Were other sources of Liquidity available? Dealers should consider whether use of other lending or revenue sources would be “**significantly detrimental**” to their business. “**Significantly Detrimental**” is not defined in the SBA Guidance. However, it seems prudent for dealers to reference typical provisions in other lending agreements such as:
  - Cross-collateralization/Cross-default provisions
  - Personal guarantees
  - Variable interest rates tied to indexes

Additionally, would the dealership use cash on hand? What would the consequence of doing so given “current economic conditions” both to the dealership and its employees?

Dealerships who applied for PPP loans did so to provide “Paycheck Protection” for their employees during this financial crisis. These loans were provided with the understanding that they would be forgiven if used for specific purposes and businesses would be required to provide evidence that funds were used appropriately when they apply for forgiveness. Those discussion should help dealers provide relevant evidence and answer any questions raised by lenders or regulators.