



May 9, 2020

DEALERSHIP INFORMATIONAL ADVISORY

COVID-19 UPDATE #23

ECONOMIC RECOVERY TASK FORCE UPDATES

The Governor's Economic Recovery Task Force met throughout the week as we continue to provide input to the Governor and Department of Health on recommendations in reopening the Arkansas economy. The goal remains to help Arkansans confidently and safely return to life and work. The following is an update on the work of the Task Force this week:

arkansasready.com

The Task Force rolled out the recovery website, arkansasready.com. This industry-specific platform provides a single source for recommendations on how you can help the Arkansas economy recover from the effects of COVID-19. The information provided at this site is based on science, data, and the decision making of state leaders and industry experts. Working smart, safe, and together makes Arkansas Ready for Business.

Included on this website are sources for PPE and a full Recovery Timeline, as well as information for both businesses and consumers. This should be a resource for all businesses and citizens to utilize.

Business Liability Concerns

The Task Force Subcommittee on Commerce is particularly concerned with potential business liability lawsuits resulting from COVID-19. Businesses such as dealerships, that remained open in order to support the response to the COVID-19 crisis in the face of legal uncertainty now risk becoming the targets of coronavirus-related lawsuits. The major concern is that the threat of litigation will derail the recovery even as businesses and their employees continue to provide the critical services, goods and facilities during the COVID-19 crisis.

AADA is working closely with business groups to emphasize the need for quick action by the Governor and the legislature to protect businesses as a key component of the Arkansas Ready for Business efforts. We will keep you updated as these efforts continue.

CLARIFYING THE NECESSITY FOR THE PAYCHECK PROTECTION PROGRAM (PPP) LOAN

In light of the recent media outrage that some larger companies received Paycheck Protection Program ("PPP") loans at the expense of smaller businesses, the SBA made it

clear that they would audit all PPP loans of over \$2 million. To allow businesses a little more time to consider their own situation (whether they truly needed the loan) the SBA has indicated that businesses who feel they do not meet the certification may return the funds by May 14, 2020 without consequences.

When dealerships applied for the PPP loans they certified that **“current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”** This certification has come under greater scrutiny by the media and the SBA due to criticism that some publicly held companies and universities 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.

So, what can a dealership do now to prepare for inquiries regarding their need for a PPP loan? We recommend that dealers answer the following questions and gather supporting documents, 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.

What Standards May be Applied in an Audit

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 company with substantial market value and access to capital markets will be able to make the required certification in good faith.”

Proving your need for PPP funding

Dealerships should document the “economic uncertainty” that was in effect at the time of the dealership’s loan application. Consider the following:

1. Reference that Arkansas has been operating under an Executive Order ("the Order") since March 11, 2020, impacting Arkansan's opportunities to work, shop, travel, go to school or use childcare facilities. What was the 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 operations of any portion 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?
- Were manufacturing plants closed, or planning to close? Was this impacting your forecast for inventory and parts.
- 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 Did/How Will PPP Funds Affect Your Employees, Your Dealership, and Your Current Business Activity?

- But 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 but 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 the 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

- The effect that taking a loan that is collateralized by the dealership would have with your manufacturers.
- The additional burden of getting normal business operations back while saddled with higher debt load.

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

Undoubtedly, dealerships which applied for PPP loans did so to provide “Paycheck Protection” for 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. The discussion above should help dealers provide relevant evidence and answer any questions raised by lenders or regulators.

ADDITIONAL AND HELPFUL LINKS

For additional information related to maintaining your dealership as safe, we would recommend monitoring updates from the CDC, [link](#) ,and OSHA, [link](#).

Please go to our website for links to information your dealership needs at [AADA coronavirus update](#).

AADA will work to keep you updated on this situation, but a firm commitment to maintaining a safe and clean work environment for your employees and customers will help you navigate this health crisis.

If you have any questions about this bulletin please don't hesitate to call, 501-372-2596, or email Greg Kirkpatrick greg@arkautodealers.com.