

Money for Nothing: A Lender's Consent Form to Permit Debt From Government Programs

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In response to the unparalleled impact on commercial real estate properties resulting from the COVID-19 pandemic, borrowers have flocked to authorized lenders to apply for loans and other relief offered under the SBA's Disaster Relief and Paycheck Protection programs. Although borrowers recognize the restrictions in most loan documents on incurring additional debt, the prevailing sentiment by most borrowers has been to apply first and address document limitations later. This approach is highlighted by concerns over funding availability for loans under the Paycheck Protection Program (PPP) and the prevailing first-come, first-served approach given the current scope of the program.

Although the matter is still unfolding, given the magnitude of the crisis and the resulting strain on borrowers' balance sheets, most bankers across the spectrum of the lending community have expressed a willingness to consider relaxing documentation constraints to permit borrowers to accept government-sponsored loan proceeds. In fact, there appears to be an emerging view in some circles that, not unlike other governmental subsidies that are commonly introduced into capital structures, acceptance of SBA loan proceeds can be credit positive if properly structured and documented.

Understanding this, we have fashioned a sample [PPP Loan Consent Agreement](#) that endeavors to address the sensitivities expressed by the lending community, from structured finance and CMBS bankers to traditional portfolio lenders. This sample Consent is prepared for approval of a PPP loan, but could easily be modified for any similar government-sponsored loan program (e.g., Main Street

lending program). As you will find, while the Consent is a bit more inclined toward the features ordinarily appearing in non-recourse documents used by institutional lenders, it nonetheless provides a framework for facilitating a discussion around how government-sponsored loan proceeds may be best introduced into a borrower's capital structure.

Because the Consent is intended to be a catalyst to facilitate discussions evolving among lenders and borrowers, we look forward to receiving your thoughts, comments, and observations as we refine the Consent in a manner that optimizes the prospect for attracting capital to support the common objectives of the lending and borrowing communities.

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