

SBA ISSUES INTERIM FINAL RULE IMPLEMENTING THE PAYCHECK PROTECTION PROGRAM PROVISIONS OF THE CARES ACT

BY [PATRICIA O'CONNELL](#) POSTED 4/3/2020 AT 2:00 AM ET

Today the Small Business Administration (SBA) issued an interim final rule to outline the key provisions of Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in formal guidance.

The CARES Act Section 1102 amends Section 7(a) of the Small Business Act to authorize existing SBA-certified lenders, federally insured credit unions, and additional lenders as determined by SBA and U.S. Department of the Treasury (the Treasury) that are participating in the Paycheck Protection Program (“PPP”) to offer loans that will provide small businesses with funds to continue to pay employees and to pay interest on mortgages, rent, and utilities. The PPP authorizes up to \$349 billion and is implemented by the SBA with support from the Treasury. PPP loans are available to small businesses, certain nonprofit organizations, veteran’s organizations or tribal business concerns with fewer than 500 employees or the NAICS size standard for that industry (whichever is greater).

Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of a PPP loan.

This interim final rule applies to applications submitted under the PPP through June 30, 2020, or until funds made available for this program are exhausted.

To enable small businesses to apply for a PPP loan as quickly as possible, the SBA is dispensing with the 30-day delayed effective date provided in the Administrative Procedure Act. PPP loans are available on a first-come, first-served basis.

This interim final rule is being issued to allow for immediate implementation of the program. Note that comments are solicited from interested members of the public on all aspects of the interim final rule, and the SBA will consider these comments and the need for making any revisions. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

WHO IS ELIGIBLE FOR A PPP LOAN?

Eligible borrowers must have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meets the applicable SBA employee-based size standards for that industry **and** the following criteria:

A small business concern as defined in section 3 of the Small Business Act, and subject to SBA’s affiliation rules under 13 CFR 121.301(f) unless specifically waived in the CARES Act;

- A tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section

501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

- Was in operation on February 15, 2020 and either had employees who were paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

For additional information on who is eligible to borrow, see the Treasury's [information for borrowers](#).

Eligible borrowers also include an individual who operates under a sole proprietorship or as an independent contractor or an eligible self-employed individual, if such persons were in operation on February 15, 2020.

Although a business might meet the eligibility requirements above, 13 CFR 120.111 and SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, outline businesses that are not eligible for PPP loans. (SOP 50 10 can be found [here](#)). However, nonprofit organizations that are specifically authorized under the CARES Act are eligible.

Note that since an eligible borrower may not receive more than one PPP loan, a borrower should consider applying for the maximum amount. Borrowers can use e-signatures to apply.

WHAT IS THE MAXIMUM PPP LOAN AMOUNT?

A small business is eligible to borrow the lesser of \$10 million or an amount that is calculated using a formula in the CARES Act, which is basically up to 2.5 times their average monthly payroll costs from the previous year. Payroll costs consist of compensation to employees in the form of salary, wages, commissions, or similar compensation; payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, payment of state and local taxes assessed on compensation of employees, and certain other costs. The CARES Act outlines exclusions to the calculation of payroll costs.

For example, the following methodology will assist most applicants in determining the maximum PPP loan amount:

Example 1 – No employees make more than \$100,000

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Maximum loan amount is \$25,000

Example 2 – Some employees make more than \$100,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of

\$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Maximum loan amount is \$250,000

Independent contractors do not count for purposes of a borrower's PPP loan calculation as they have the ability to apply for a PPP loan on their own.

HOW CAN PPP LOANS BE USED?

The PPP loan is to be used for:

- payroll costs (as defined in the CARES Act and above);
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- mortgage interest payments (but not mortgage prepayments or principal payments);
- rent payments;
- utility payments;
- interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- refinancing an SBA Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 with certain conditions. If the EIDL loan was not used for payroll costs, it does not affect the eligibility for a PPP loan. If the EIDL loan was used for payroll costs, the PPP loan must be used to refinance the EIDL loan.

WHAT IS THE INTEREST RATE AND MATURITY ON A PPP LOAN?

The interest rate will be 100 basis points or one percent. The SBA, in consultation with the Treasury, has determined that this rate provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation and for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities.

The maturity is two years.

WHEN MUST REPAYMENT OF PRINCIPAL AND INTEREST BEGIN?

Payments do not need to be made for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment.

CAN THE PPP LOAN BE FORGIVEN?

Borrowers are eligible for loan forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, dollar for dollar, if employee and compensation levels are maintained. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. The actual amount of loan

forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.

WHAT FORMS ARE REQUIRED FOR BORROWER AND LENDER?

Borrowers must submit SBA [Form 2483](#) (Paycheck Protection Program Application Form) and required payroll documentation as outlined in the interim final rule. Lenders must submit SBA [Form 2484](#) (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

WHAT ARE REQUIRED CERTIFICATIONS FOR A PPP LOAN?

On the Paycheck Protection Program Application Form SBA Form 2483, an authorized representative of the applicant must certify in good faith to the timeframe during which the applicant was in operation and paying employee salaries, the necessity for the loan request to continue operations in the current economic situation, that funds will be used to retain employees and pay salaries and other approved costs, and provide required documentation to verify stated costs.

WHAT DO LENDERS NEED TO KNOW AND DO TO BE QUALIFIED TO MAKE PPP LOANS?

All SBA-certified 7(a) lenders are automatically approved to make PPP loans.

In addition, the following types of lenders have been determined by SBA and the Treasury to meet the criteria outline in the CARES Act and are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action with their primary federal regulator that addresses unsafe or unsound lending practices:

Any federally insured credit union
Any federally insured depository institution

- Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) that applies the requirements under the Bank Secrecy Act
- Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial receivables and participation interests and meets other certain requirements outlined in the interim final rule.

To automatically qualify to make PPP loans, a federally insured credit union must transmit a CARES Act Section 1102 Lender Agreement (SBA Form 3506). This form is expected to be available on the Treasury and SBA websites imminently.

WHAT ARE THE LOAN UNDERWRITING REQUIREMENTS?

A Lender shall:

- Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form
- Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020 (e.g., such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC)
- Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application
- Follow applicable BSA requirements
- Lenders do not have to confirm that the borrower is unable to obtain credit on reasonable terms from a non-Federal source.

Federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP.

The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The SBA will hold harmless any lender that relies on such borrower documents and attestation from a borrower.

WHAT FEES WILL LENDERS BE PAID?

SBA will pay lenders fees for processing PPP loans in the following amounts:

Five (5) percent for loans of not more than \$350,000

- Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- One (1) percent for loans of at least \$2,000,000.

WHAT ARE THE LOAN TERMS AND CONDITIONS?

In addition to the terms and conditions of other 7(a) loans, the PPP loans will be guaranteed with certain changes including but not limited to:

- The guarantee percentage is 100 percent.
- No collateral or personal guarantee will be required.
- The interest rate will be 100 basis points or one percent.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.
- There will be no up-front guarantee fee payable to SBA by the borrower.

- There will be no lender's annual service fee ("on-going guaranty fee") payable to SBA.
- There will be no subsidy recoupment fee.
- There will be no fee payable to SBA for any guarantee sold into the secondary market.
- Agent fees will be paid by the lender out of the fees the lender receives from SBA.
- A PPP loan may be sold on the secondary market after the loan is fully disbursed.

Lenders can submit a PPP loan or pool of PPP loans for advance purchase, by submitting a report requesting advance purchase with the expected forgiveness amount to the SBA. The interim final rule lists the documentation required,

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office.

The local SBA Field Office may be found [here](#).

The final interim rule can be found [here](#).