



Frequently Asked Questions about the SBA's Paycheck Protection Program

April 6, 2020

Executive Summary

On March 27, 2020, President Trump signed P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law. As part of this nearly \$2.2 trillion aid package to fight the COVID-19 (coronavirus) pandemic, Congress appropriated approximately \$349 billion for the creation of the Paycheck Protection Program (PPP). This program provides payroll assistance for the nation's nearly 30 million small businesses, and select nonprofits, in the form of 100% guaranteed loans from the U.S. Small Business Administration (SBA).

Simply put, eligible borrowers work with lenders to apply for, and receive, loans up to 2.5 times their average monthly payroll expenses for the prior year. Loans, which can be issued between April 3, 2020 and June 30, 2020, will carry a 1% interest rate with a two-year term. Loan payments are deferred for the first six months of the loan. Additionally, PPP loans contain a forgiveness process, allowing up to eight weeks of covered expenses, including both principal and interest, to be forgiven for the borrower with no tax consequence (i.e., forgiveness of indebtedness income is waived). Any remaining balance after the loan forgiveness period maintains a 100% government guarantee while the borrower makes payments. A lender will be able to sell these loans into the secondary market once the funds have been disbursed.

Below is a summary of the PPP and its impact on borrowers and lenders, followed by frequently asked questions and answers. *Please note that the FAQ reflects SBA guidance that had been released by Monday, April 6, 2020 at 12:00 p.m. EDT.*

Paycheck Protection Program (PPP) Eligibility for Borrowers

Borrowers are broadly eligible if they have 500 or fewer employees, or are certain businesses that meet SBA size standards. Additionally, 501(c)(3) nonprofits, 501(c)(19) veterans organizations, and certain tribal concerns qualify for PPP loans. Borrowers may also be sole proprietors, independent contractors, or self-employed. Borrowers must have been in operation on February 15, 2020, and employed either salaried employees subject to payroll taxes or paid independent contractors.

Further, borrowers must certify they meet the criteria above, were impacted by current economic uncertainty, and they will use the funds for allowable uses defined in 'Loan Terms' below. Borrowers must also provide the relevant documentation as part of this certification. Finally, borrowers must certify the information they provide is accurate.



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Loan Terms

These first-come, first-served loans are offered until June 30, 2020, or until the program runs out of funds. Loans are capped at the lesser of 250% of a borrower's average monthly payroll costs, or \$10 million. Payroll costs include, but are not limited to, salary, paid leave, medical, and healthcare. Further, salary for employees making more than \$100,000 is capped at that level for the calculation of loan size. All loans have a 1% interest rate and a two-year term. Loans are 100% guaranteed by the SBA. E-signatures or e-consents may be used. Loan payments may be deferred for up to 6 months.

PPP loans may be used to pay for payroll costs, mortgage interest obligations, rent obligations, utilities, and any other interest payment on debt obligations accrued before February 15, 2020. SBA requires 75% of the loan to be used for payroll costs, while the remaining 25% can be used for the other expenses. Funds used for purposes other than those outlined above must be repaid by the borrower.

SBA will not collect any fees from either the borrower or the lender.

PPP Eligibility for Lenders

Lenders are eligible to participate in PPP right away if they are a current SBA 7(a) lender. If a lender is not a current 7(a) lender, they must fill out SBA [Form 3506](#) for Federally Insured Depository Institutions and submit it to DelegatedAuthority@sba.gov. Submission of the form will constitute acceptance and those lenders will be able to begin submitting loan applications. Lenders that are currently 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 are ineligible to join the PPP lending program.

Lender Responsibilities in PPP

Lenders must confirm the eligible loan amount for borrowers using the relevant tax documents submitted by the borrowers. Additional underwriting requirements include; confirm receipt of the borrower certification; confirm receipt of borrower having employees on February 15, 2020; and confirm average monthly payroll. Additionally, for lenders, PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

Lenders can waive the credit elsewhere test when evaluating a borrower's application. Additionally, collateral and personal guarantees are waived.

Lenders may receive a one-time processing fee from the SBA based on a percentage of the loan size. The fee tiers are as follows:

- 5% – Loans up to \$350,000,
- 3% – Loans more than \$350,000 and less than \$2,000,000; and
- 1% – Loans more than \$2,000,000.



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If a borrower or lender uses an Agent in the loan process, the lender will pay a percentage out of its processing fee to the agent. Agent fees are capped as follows:

- 1% – Loans up to \$350,000,
- 0.5% – Loans more than \$350,000 and less than \$2,000,000; and
- 0.25% – Loans more than \$2,000,000.

Loan Forgiveness

After disbursement of the loan, a borrower is eligible for loan forgiveness on up to eight weeks of covered expenses. A borrower will apply to a lender by submitting all the relevant paperwork, at which time a lender will have up to sixty days to approve or deny the application. Importantly, lenders can rely on borrower documentation for loan forgiveness. If the loan forgiveness application is approved, that portion of a borrower's loan is forgiven, and SBA will pay the lender the part of the principal amount plus interest.

SBA also has a pre-purchase option that allows a lender to submit the expected amount of funds spent after seven weeks from the date of the loan's disbursement. SBA will then purchase the expected forgiveness amount within fifteen days.

Secondary Market

A lender may sell a loan into the secondary market after the loan is fully disbursed. This represents a change from the legislation, which required the lender to hold onto the loan until after the loan forgiveness period ended. SBA will issue further guidance for any advance purchases of loans sold on the secondary market.

Following are questions and answers to the most frequently asked questions about the Paycheck Protection Program.



Frequently Asked Questions about the SBA's Paycheck Protection Program

Resources

Treasury and SBA Forms, Guidance and Resources

- [Interim Final Rule](#)
- [Interim Final Rule on Affiliation](#)
- [Applicable Affiliation Rules](#)
- [Frequently Asked Questions on PPP](#)
- [SBA Form 3506](#), which non-SBA lenders must submit to be given authority to make PPP loans. Note that completed forms can be submitted to delegatedauthority@sba.gov.
- [SBA guidance on faith-based borrower eligibility](#)
- [Treasury guidance on applicable affiliation rules](#)
- [Treasury Q&A](#), a Treasury resource that will be routinely updated
- [PPP Lender Information Sheet](#)
- [PPP borrower Information Sheet](#)
- [Borrower Application Form \(Updated 4/2/20\)](#)
- [New Lender Application Form \(Federally Insured Depository Institutions, Federally Insured Credit Unions, Farm Credit System Institutions\)](#)
- [SBA's Capital Access Financial System \(CAFS\)](#)

ABA Resources

- [ABA talking points on PPP for use with media and customers](#)
- [ABA Banking Journal Podcast](#) episode with ABA's SBA experts and a banker who approved and funded PPP loans early Friday (more on that below)
- [ABA Staff Analysis©: FinCEN's Guidance for Banks Coping with COVID-19](#)

Please note that the answers to the questions below reflect SBA guidance that had been released by Monday, April 6, 2020 at 12:00 p.m. EDT. This FAQ is intended to be a resource to help decipher this existing SBA guidance.

SBA has indicated it will continue to release updated guidance as the SBA's Paycheck Protection Program rolls out. Accordingly, ABA will update this FAQ following the release of further SBA guidance documents.

If there is a conflict between this FAQ and SBA guidance, SBA guidance is controlling and should be adhered to by lenders as they process and submit PPP applications.



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HOW DO I BECOME A PPP LENDER?

1) Who is eligible to make PPP loans?

All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.

2) Can banks that are currently SBA lenders, but not 7(a) lenders, make PPP loans? Can non-SBA banks make PPP loans?

The short answer is yes, but these banks are not automatically approved and need to file [SBA form 3506 for Federally Insured Depository Institutions](#) with the SBA to receive the delegated authority before making PPP loans. The form requires an attachment of a certificate of incumbency from the lender.

New lenders will need to submit their application to DelegatedAuthority@sba.gov to apply with the SBA. Once submitted, lenders can begin submitting applications.

SBA may provide further guidance 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 at <https://www.sba.gov/tools/local-assistance/districtoffices>.

3) What paperwork does a qualified bank need to file before making PPP loans?

Qualified institutions will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement ([SBA Form 3506](#)) unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices.

4) Which lenders are ineligible to become PPP lenders?

Lenders that are currently 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 are ineligible to join the PPP lending program.

5) Which lenders are eligible to become PPP lenders?

The authority to make PPP loans may be extended to:

1. Any federally insured depository institution or any federally insured credit union;
2. Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C.2002(a) that applies the requirements under the Bank Secrecy Act and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by this rule; and
3. Any depository or non-depository financing provider that:
 - a. Originates, maintains, and services business loans or other commercial financial receivables and participation interests;



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- b. Has a formalized compliance program;
- c. Applies the requirements under the BSA as a federally regulated financial institution, or the BSA requirements of an equivalent federally regulated financial institution;
- d. Has been operating since at least February 15, 2019, and
- e. Has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, or
- f. Is a service provider to any insured depository institution that has a contract to support such institution's lending activities in accordance with 12 U.S.C. § 1867(c) and is in good standing with the appropriate Federal banking agency.

6) I'm a Current 7(a) Lender and can't access the ETRAN system. What do I do?

The SBA is working to improve the E-Tran security requests issues, while preserving IT infrastructure security.

CURRENT USERS: SBA is running a script to enable all lenders that previously had an account with Capital Access Financial Systems (CAFS)--which is the portal to E-Tran--to be automatically reactivated.

NEW USERS: still must go through steps #1 - #3 of the security protocol to receive a user ID and password. That protocol can be found in these links:

1. [Create an Account](#)
2. [Update Profile](#)
3. [Setting Up Roles](#)

7) Who can I contact at SBA about E-Tran problems? *(new)*

The SBA has established a lender hotline for those having issues with SBA's E-Tran system:

1-833-572-0502

You may also email SBA's Sheri McConville at SBA HQ sheri.mcconville@sba.gov. Sheri is leading a team at SBA HQ E-Tran issues.

8) I submitted Form 3506 and haven't been added to the E-Tran system yet. What do I do? *(new)*

The SBA's Office of Credit Risk Management (OCRM) is reviewing all incoming lender applications. Once they have reviewed your submission, OCRM grants you authority to be in the system. At that time, you should have access to E-Tran.

9) What is a Certificate of Incumbency? Is there a template we should use? *(new)*

Generally, a certificate of incumbency:

1. Identifies current directors and shareholders in a corporation or LLC.,
2. Ensures that company officers are authorized to sign legal documents for the company and enact important legal transactions.

The certificate will need to:

1. Identify the corporate officer's name, position, and term of office or employment,
2. Signed by a corporate secretary, and
3. Include a corporate seal.



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A notary public or other witnesses are not required for this legal document. Contact your state banking association for instructions on completing a Certificate of Incumbency in your state.

AGENTS AND AUTHORIZED BANK REPRESENTATIVES

10) Who can be an Agent?

An agent is an authorized representative of the lender and can be:

1. An attorney;
2. An accountant;
3. A consultant;
4. Someone who prepares an applicant's application for financial assistance and is employed and compensated by the applicant;
5. Someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans;
6. A loan broker; or
7. Any other individual or entity representing an applicant by conducting business with the SBA.

11) Under the PPP program, who pays the fee to an agent who assists a borrower?

1. Agent fees will be paid by the lender out of the fees the lender receives from SBA.
2. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds.
3. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:
 - a. One (1) percent for loans of not more than \$350,000;
 - b. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
 - c. 0.25 percent for loans of at least \$2 million.

APPLICATIONS

12) Is the PPP "first-come, first-served?"

Yes.

13) What forms need to be completed and submitted by the applicant?

The applicant must submit:

1. SBA Form 2483 ([Paycheck Protection Program Application Form](#)), and
2. Payroll documentation.

14) What forms need to be completed by the lender?

The lender must submit:

1. SBA Form 2484 ([Paycheck Protection Program Lender's Application for 7\(a\) Loan Guaranty](#)) electronically in accordance with program requirements, and
2. Maintain the borrower's forms and supporting documentation in the bank's files.



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BORROWER ELIGIBILITY

15) Can a borrower apply for more than one PPP loan?

No eligible borrower may receive more than one PPP loan.

16) Why are borrowers limited to one PPP loan?

The SBA and US Treasury determined that a one loan per borrower limitation is necessary to ensure that as many eligible borrowers as possible may obtain a PPP loan. This limitation also helps advance Congress' goal of keeping workers paid and employed across the United States.

17) Do lenders apply the "credit elsewhere test"?

No.

When evaluating an applicant's eligibility, lenders will not be required to apply the "credit elsewhere test" as set forth in [7\(a\)\(1\)\(A\)](#) of the Small Business Act (15 USC 636) and regulations at [13 CFR 120.101](#).

18) What are the eligibility criteria for small business borrowers?

Borrowers are eligible small businesses for a PPP loan if:

1. They have 500 or fewer employees
2. Whose principal place of residence is in the United States
3. Operating on February 15, 2020, and had
 - a. Employees for whom you paid salaries and payroll taxes, or
 - b. Paid independent contractors, as reported on a Form 1099-MISC.

19) Can a business still be eligible for a PPP loan if it has more than 500 employees?

Yes. If it is:

1. A business operating in certain industries,
2. Meets the applicable SBA employee-based size standards or that industry, and
3. Is a small business concern as defined in section 3 of the [Small Business Act \(15 USC 632\)](#), and
4. Subject to SBA's affiliation rules under 13 [CFR 121.301\(f\)](#) unless specifically waived in the CARES Act.

20) What are the categories of business that may have more than 500 employees? *(updated)*

Franchise and food services may have more than 500 employees. However, they may not have more than 500 employees at any one location.

For this program, the SBA's affiliation standards are waived for small businesses:

1. In the hotel and food services industries as listed in [NAICS code 72](#);
2. Franchises in the SBA's [Franchise Directory](#); or
3. Receiving financial assistance from small business investment companies licensed by the SBA.

Section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. § 636(a)(36)(D)(iv), as added by the CARES Act, waives the affiliation rules contained in section 121.103 for:

1. Any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;



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2. Any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and
3. Any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).

As a result, the affiliation rules contained in section 121.301 also do not apply to these types of entities.

21) What is the affiliation analysis to determine whether a small business meets the size eligibility requirements?

The existing affiliation rules governing borrower eligibility for SBA loans can be found at 13 [CFR §§ 121.103 and 121.301](#) to PPP loans.

22) If the borrower is part of a group of affiliated companies and doesn't have tax documents that break out its own payroll costs, how can the borrower support the calculation of the loan amount and truthfully make the certification?

1. The first question is whether the applicant small business is still eligible for a PPP loan under the affiliation rules. The SBA size and affiliation rules can be found on the [website](#).
2. If the subsidiary business is eligible for a PPP loans, then each affiliate company should have its individual payroll tax filings. If there is a common parent or other affiliate that is the employer for employees working in multiple companies, it would appear that the legal entity actually making the payment should provide the payroll information, and perhaps calculate and provide separate entity detail from transfer pricing calculations, based on costs that are being transferred via transfer pricing to the appropriate affiliate entity.

23) Are tax exempt nonprofits, such as churches, veterans organizations and tribal businesses, eligible for PPP loans?

Yes, many tax-exempt nonprofits are eligible for PPP loans. Eligible nonprofits include:

1. Tax-exempt nonprofit organization described in [section 501\(c\)\(3\)](#) of the Internal Revenue Code (IRC). This type of organization includes charitable organizations, churches and religious organizations, private foundations, and others
2. Tax-exempt veterans organization described in [section 501\(c\)\(19\)](#) of the IRC, defined as follows:
 - At least 75 percent of its members must be past or present members of the United States Armed Forces
 - At least 97.5 percent of its members must be:
 - present or former members of the United States Armed Forces,
 - cadets (including only students in college or university ROTC programs or at Armed Services academies) or
 - spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to in the first or second bullet
 - It must be operated exclusively for one or more of the following purposes:
 - to promote the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community
 - to assist disabled and needy war veterans and members of the United States Armed Forces and their dependents - and the widows and orphans of deceased veterans



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- to provide entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces
- to carry on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors
- to conduct programs for religious, charitable, scientific, literary or educational purposes
- to sponsor or participate in activities of a patriotic nature
- to provide insurance benefits for members or their dependents or
- to provide social and recreational activities for members
- No part of its net earnings may inure to the benefit of any private shareholder or individual.”

3. Tribal business concern described in [section 31\(b\)\(2\)\(C\)](#) of the Small Business Act. The Act defines a tribal business concern as one “that is owned in part by 1 or more Indian tribal governments, or by a corporation that is wholly owned by 1 or more Indian tribal governments, if all other owners are either United States citizens or small business concerns.”

24) Churches and religious nonprofits are usually ineligible for SBA lending programs. How are they eligible for PPP loans?

Nonprofit organizations otherwise excluded from SBA program, but authorized under the CARES Act, are eligible for a PPP loan.

Prior to the CARES Act, the nonprofit organizations listed above were not eligible for SBA Business Loan Programs under section 7(a) of the Small Business Act; only for-profit small business concerns were eligible. The Act made such nonprofit organizations not only eligible for the PPP, but also subjected them to SBA's affiliation rules. Specifically:

[Section 1102](#) of the Act provides that the provisions applicable to affiliations under [13 CFR 121.103](#) apply with respect to nonprofit organizations and veterans organizations in the same manner as with respect to small business concerns.

25) Are banks and other financial businesses, such as finance companies and pawn shops, eligible to receive PPP loans?

No.

The underlying and existing [SBA SOP 50 10 5 \(K\)](#), as well as in [CFR §120.110](#), preclude banks from participating. The CFR states that “Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances) are ineligible for SBA business loans.

Unless a typically exempt organization was specifically allowed to participate in the PPP program under the CARES Act, like a 501(c)(3), then these usually ineligible businesses are unable to apply for PPP loans.

26) Is agriculture eligible to receive PPP loans?

Yes.



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Agriculture is addressed under [SBA 7\(a\) loan eligibility](#), and [15 USC 632](#). Additionally, [CFR 120.103](#) allows for a Memorandum of Understanding between USDA and SBA for farm related business loan programs. Agricultural cooperatives are eligible under [CFR 121.105](#).

The [Interim Final Rule](#) for Business Loan Temporary Changes, allows for agriculture to be eligible for PPP loans if the business “has 500 or fewer employees whose principal place of residence is in the United States **OR** (emphasis added) is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry.” Therefore, agricultural businesses under 500 employees will not have to adhere to SBA size standards.

27) Are sole proprietorships, independent contractors, and the self-employed eligible for PPP loans?

Yes. Individuals are eligible for PPP loans if:

1. They operate as a:
 - a. Sole proprietorship,
 - b. Independent contractor, or
 - c. Eligible self-employed individual, and
2. They were in operation on February 15, 2020.

28) What could make an otherwise eligible borrower ineligible for a PPP loan?

An otherwise eligible borrower may be found ineligible for a PPP loan if they are:

1. Engaged in an activity that is illegal under federal, state, or local law;
2. A household employer (individuals who employ household employees such as nannies or housekeepers);
3. An owner of 20 percent or more of the equity of the applicant small business is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or
4. The borrower, or any business owned or controlled by the borrower or any of the owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

29) Are cannabis businesses ineligible for PPP loans?

Given that under the Controlled Substances Act (CSA), marijuana is still considered a Schedule 1 drug, and cultivation and distribution of marijuana remain federal felonies, cannabis businesses are likely ineligible for PPP loans.

30) Why are household employers excluded?

The SBA, in consultation with the Secretary of the Treasury, determined that household employers are ineligible because they are not businesses. [See 13 CFR 120.100](#).

31) How is ineligibility determined?

1. Businesses that are ineligible for PPP loans are identified in [13 CFR 120.110](#), and
2. Described in SBA's [Standard Operating Procedure \(SOP\) 50 10, Subpart B, Chapter 2](#).

NOTE: Nonprofit organizations otherwise excluded, but authorized under the CARES Act, are eligible



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for a PPP loan.

32) Are affiliates considered together for purposes of determining eligibility? *(new)*

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP. Under SBA rules, entities may be considered affiliates based on factors including stock ownership, overlapping management, and identity of interest.

The detailed affiliation standards contained in section 121.103 currently do not apply to PPP borrowers, because section 121.103(a)(8) provides that applicants in SBA's Business Loan Programs (which include the PPP) are subject to the affiliation rule contained in [13 CFR 121.301](#).

33) Are otherwise qualified faith-based organizations exempt from SBA's affiliation rules? *(new)*

Yes. The [Interim Final Rule](#) for Business Loan Program Temporary Changes recognized that otherwise qualified faith-based organizations are exempted from the SBA affiliation rules.

The SBA is exempting exempt faith-based organizations from SBA's affiliation rules. Accordingly, the SBA's affiliation rules do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any other person, group, organization, or entity based on a sincere religious teaching or belief or otherwise constitutes the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form.

A faith-based organization seeking loans under this program may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization, or entity is exempt from the affiliation rules under this provision.

SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization's determination of its relationships and affiliations.

34) How does a faith-based organization claim the exemption to the SBA affiliation rule? *(new)*

Within the application, the faith-based organization should:

1. Include an addendum on a separate sheet of paper claiming the exemption.
2. Identify the sheet of paper as "Addendum A."
3. No specific process, format, or filing is necessary to claim the benefit of this exemption, however the [Interim Final Rule](#) for Business Loan Program Temporary Changes provides a sample "Addendum A" that may be used as a template.

SAMPLE ADDENDUM A:

The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because the Applicant has made a reasonable, good faith determination that the Applicant qualifies for a religious exemption under 13 C.F.R. 121.103(b)(10), which says that "[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization . . . if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion."



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When applying for a loan under the PPP, a faith-based organization may make all necessary certifications with respect to common ownership or management or other eligibility criteria based upon affiliation if the organization:

1. Would be an eligible borrower but for application of SBA affiliation rules, and
2. Falls within the terms of the affiliation exemption.

35) Is there a worksheet to help determine a borrower's affiliates and number of employees? *(new)*

In order to help potential borrowers identify other businesses with which they may be deemed to be affiliated under the common management standard, the Borrower Application Form, SBA Form 2483, released on April 2, 2020, requires applicants to list other businesses with which they have common management. The information supplied by the applicant in response to that information request should be used by applicants as they assess whether they have affiliates that should be included in their number of employees reported on SBA Form 2483.

36) I am hearing that SBA is only considering the number of employees (fewer than 500 EEs) and not looking at revenue for certain industries. Is this true? *(new)*

The SBA and US Treasury are taking an inclusive approach to PPP applicants. ABA is working to confirm the employee-number, revenue, and affiliation calculation for applicants, especially those that would usually fall within the SBA's industry-specific size standards.

DOCUMENTATION AND BORROWER CERTIFICATION

37) What documentation is needed from individuals applying as a sole proprietorship, independent contractor, or self-employed?

Individuals must submit documentation to establish their eligibility such as:

1. Payroll processor records,
2. Payroll tax filings,
3. Form 1099-MISC, or
4. Income and expenses from a sole proprietorship.

38) What alternative documentation is acceptable for individuals that do not have the formal documents and records listed in FAQ 37?

Individuals who do not have any such documentation must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

39) Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes. E-signature or e-consents can be used regardless of the number of owners.

40) What certifications need to be made?

On the PPP application, an authorized representative of the applicant must certify in good faith to:

1. The applicant was in operation on February 15, 2020, and



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2. Had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
3. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
4. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.
5. Understanding that if the funds are knowingly used for unauthorized purposes, the federal government may hold the borrower legally liable such as for charges of fraud.
6. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.
7. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities.
8. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
9. The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.
10. Understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
11. Acknowledge that the lender will confirm the eligible loan amount using tax documents the borrower has submitted.
12. Affirm that the tax documents are identical to those submitted to the Internal Revenue Service.
13. Understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

41) Who can certify on behalf of the borrower?

A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

42) What is the bank's liability for relying on applicant attestations?

The SBA will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The SBA and US Treasury have determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate due to CARES Act section 1106(h), which prohibits the SBA from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require the lender to replicate every borrower's calculations? (FROM UST FAQ released April 5 2020)



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Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

UNDERWRITING PPP LOANS

43) What is required for PPP loan underwriting?

Each lender shall:

1. Confirm receipt of borrower certifications contained in [PPP Application form](#) issued by the SBA;
2. 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;
3. 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; and
4. Follow applicable BSA requirements

44) What are a bank's underwriting obligations?

1. Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "[Paycheck Protection Application Form](#)."
2. Borrowers must submit such documentation as is necessary to establish eligibility, such as:
 - a. Payroll processor records,
 - b. Payroll tax filings, or Form 1099-MISC, or
 - c. Income and expenses from a sole proprietorship.
3. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

BANK SECRECY ACT (BSA) COMPLIANCE

45) What are the BSA expectations for insured depository institutions? *(updated)*

Financial institutions 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.

On Friday, April 3, FinCEN offered additional guidance for banks dealing with changed circumstances under the national emergency, particularly how to manage compliance with the Bank Secrecy Act (BSA) expectations under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). To ensure the success of the program, FinCEN plans to offer additional guidance as appropriate.

FinCEN emphasized the importance of BSA compliance to protect national security. At the same time, FinCEN stressed the need to continue to apply a risk-based approach to BSA. FinCEN also acknowledged that steps bank have been taking to protect employees and customers through social distancing and will



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continue to evaluate the situation along with the prudential regulators. When appropriate, they will issue additional guidance.

46) Do PPP loans require BSA reverification for existing customers? *(updated)*

PPP loans for existing customers will not require reverification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

As stated by FinCEN, "PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless other indicated by the institution's risk-based approach to BSA compliance" (emphasis added). In other words, banks will have to make an independent determination, based on their risk assessment of an existing customer, whether to update existing beneficial ownership information on file.

For non-PPP loans, a September 2018 FinCEN ruling specified that if a loan pre-dates the effective date of the rule (May 11, 2018) and the modification or renewal does not require underwriting or approval, the beneficial ownership requirements do not apply. Essentially, then, most non-PPP loans will require full compliance with the beneficial ownership requirements. However, the FinCEN guidance acknowledges that a risk-based approach "may result in reasonable delays in compliance."

47) What are the CTR filing requirements? *(new)*

FinCEN also acknowledges that there may be delays in filing CTRs under current circumstances. Therefore, it has suspended a February ruling that would have required CTR filings to include location information for entities. That revision would have taken effect on April 6 for individual filers and September 1 for batch filers. Banks that have already made the change to comply with the new requirements can continue operating under the February ruling.

48) How should new FinCEN Contacts be handled? *(new)*

To help banks comply with the changed circumstances, FinCEN has created a new contact mechanism. Banks that need assistance should go to the FinCEN website (www.fincen.gov) and then at the center of the bottom of the first page, click on the tab labelled "Need Assistance." On the form that pops up, bankers should select "COVID-19" from the dropdown menu under "Subject" towards the bottom of the form (just above the message section). FinCEN will respond to the extent possible and reminds bankers to keep their prudential supervisor and FinCEN informed about any changed circumstances. Beneficial Ownership Information for Existing Customers. FinCEN acknowledges that the Paycheck Protection Program (PPP) is a key component of the CARES Act. However, the new FinCEN guidance does not offer much more than what was published in the Small Business Administration (SBA) interim final rule.

HOW ARE THE LOAN AMOUNTS, TERMS, AND CONDITIONS DETERMINED?

49) What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes, including but not limited to:

1. The guarantee percentage is 100 percent.
2. No collateral will be required.
3. No personal guarantees will be required.
4. The interest rate will be 100 basis points or one percent.



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5. All loans will be processed by all lenders under delegated authority, and
6. 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.

50) What processing fee will SBA pay PPP lenders?

SBA will pay lenders a fee for processing PPP loans. Processing fees will be based on the balance of the financing outstanding at the time of final disbursement:

Fee	Loan Amount
5%	Loans of not more than \$350,000;
3%	Loans of more than \$350,000 and less than \$2,000,000;
1%	Loans of at least \$2,000,000.

51) Are there fee waivers?

1. There is no up-front guarantee fee payable to SBA by the Borrower;
2. There will be no lender's annual service fee ("on-going guaranty fee") payable to SBA;
3. There will be no subsidy recoupment fee; and
4. There will be no fee payable to SBA for any guarantee sold into the secondary market.

REFINANCING AN SBA ECONOMIC INJURY DISASTER LOAN (EIDL)

52) Can a borrower refinance an existing SBA EIDL loan into a PPP Loan?

Yes.

If the EIDL was made from January 31, 2020 - April 3, 2020, the borrower may apply for a PPP loan and refinance the existing EIDL into the PPP loan.

53) Can an EIDL be refinanced into a PPP loan even if it was not used for payroll costs?

If the EIDL was not used for payroll costs, it does not affect the borrower's eligibility for a PPP loan. If the EIDL was used for payroll costs, your PPP loan must be used to refinance your EIDL.

54) How is the EIDL \$10,000 advance calculated into the PPP loan?

Proceeds from any advance up to \$10,000 on the EIDL will be deducted from the loan forgiveness amount on the PPP loan.

55) How does an EIDL refinance into a PPP loan effect the PPP loan forgiveness determination?

For purposes of determining the 75% of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.



CALCULATING PAYROLL COSTS

56) What qualifies as “payroll costs” for a small business?

Payroll costs consist of:

1. Compensation to Employees with principal residence is the United States
 - a. Salary, wages, commissions, or similar compensation,
 - b. Cash tips or the equivalent based on:
 - i. Employer records of past tips or,
 - ii. In the absence of such records, a reasonable, good-faith employer estimate of such tips.
2. Payment for vacation, parental, family, medical, or sick leave;
3. Allowance for separation or dismissal;
4. Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
5. Payment of state and local taxes assessed on compensation of employees.

57) What tax documentation should borrowers provide? Some are saying the borrower needs to provide its Form W-3, while I've seen others stating that Forms 941/942/945 should be provided.

Although not yet defined by SBA guidance, it would seem both W-3's and the 940 series of forms would be acceptable.

- As the loan amount is determined based on monthly payroll amounts, the quarterly information on Form 941 may be more helpful in calculating and prorating the amount of qualified wages during the preceding year depending on when the loan was made.
- The detail supporting the amounts on Form 945 may also be helpful.

58) What qualifies as “payroll costs” for an independent contractor or sole proprietor?

Payroll costs for an independent contractor or sole proprietor are wages, commissions, income, or net earnings from self-employment or similar compensation.

59) What is excluded from the definition of payroll costs?

The CARES Act expressly excludes:

1. Any compensation of an employee whose principal place of residence is outside of the United States;
2. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
3. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including:
 - a. Employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and
 - b. Income taxes required to be withheld from employees; and
4. Qualified sick and family leave wages for which a credit is allowed under sections [7001](#) and [7003](#) of the Families First Coronavirus Response Act (Public Law 116–127).



60) Do independent contractors count as employees in PPP loan calculations?

No.

Independent contractors can apply for a PPP loan on their own, so they do not count for purposes of another borrower's PPP loan calculation.

61) Owners of partnerships and limited liability companies sometimes compensate themselves through profits distributions, rather than salary. Are such distributions "payroll costs" for purposes of determining the maximum loan amount and the amount of the loan that may be forgiven?

Neither the CARES Act statutory language, nor the IFR speaks to this scenario specifically. However, it seems to be the type of compensation outside of the Congressional intent of the underlying legislation.

The definition of payroll costs in the statute encompasses compensation, including "salary, wages, commissions, or similar compensation" as earnings from employment. If the payments are not subject to employment or self-employment tax, it may be difficult to treat those amounts as payroll costs for the purposes of a PPP loan.

CALCULATING THE LOAN AMOUNT

62) What is the maximum PPP loan amount?

- The maximum PPP loan amount is \$10 million.
- The maximum loan amount that will be extended to a borrower is \$10 million, or an amount determined by a payroll-based formula—whichever amount is less.

63) Should a borrower apply for less than their maximum loan amount?

Given that a borrower may only hold one PPP loan, it is recommended that eligible borrowers should consider applying for their maximum amount.

64) What is the payroll-based calculation to determine loan amount?

1. **Step 1:** Aggregate payroll costs (for further details see FAQs 37, 38 & 40) from the last twelve months for employees whose principal place of residence is the United States.
2. **Step 2:** Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.
3. **Step 3:** Calculate average monthly payroll costs (divide the amount from Step 2 by 12 months).
4. **Step 4:** Multiply the average monthly payroll costs from Step 3 by 2.5 (PPP Payroll multiplier).
5. **Step 5:** Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

INTEREST RATE ON PPP LOANS

65) What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or 1%.



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66) Why isn't the interest rate 4% as stated in the CARES Act? Why isn't the interest rate 0.5% as first reported?

While the CARES Act provides that a loan may have an interest rate up to 4%, as of April 2, 2020, the SBA, in consultation with the US Treasury, determined that a one percent interest rate is appropriate.

- According to Treasury, this rate provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus.
- According to Treasury, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities.

PPP LOAN MATURITY DATE

67) What is the maturity date on a PPP loan?

The maturity is two years.

68) Why isn't the loan maturity date 10 years as stated in the CARES Act?

While the CARES Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness, the SBA in consultation with the US Treasury, determined that a two year loan term is sufficient given the temporary economic dislocations caused by the coronavirus.

DEFERRAL OF LOAN PAYMENTS: 6 MONTHS

69) When does the borrower start paying principal and interest on a PPP loan?

Borrowers do not have to make any payments 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.

70) How long can PPP loan payments be deferred?

PPP loan payment may only be deferred for 6 months.

71) Why can't PPP loan payments be deferred for up to one year as stated in the CARES Act?

Although the CARES Act authorizes the SBA to defer loan payments for up to one year it was determined in the April 2 Interim Final Rule (IFR) to limit deferrals to 6 months. As stated in the IFR, "the [SBA] determined, in consultation with the [US Treasury], that a six-month deferment period is appropriate in light of the modest interest rate (one percent) on PPP loans and the loan forgiveness provisions contained in the [CARES] Act.

USE OF PPP LOAN FUNDS

72) How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

1. Payroll costs (as defined in the CARES Act and SBA's IFR)
2. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
3. Mortgage interest payments (but not mortgage prepayments or principal payments);



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4. Rent payments;
5. Utility payments;
6. Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
7. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

73) What happens if PPP loan funds are misused?

If a borrower uses PPP funds for unauthorized purposes, SBA will direct the borrower to repay those amounts.

1. If a borrower knowingly uses the funds for unauthorized purposes, the borrower will be subject to additional liability such as charges for fraud.
2. If a borrower's shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

LOAN FORGIVENESS

74) Can a PPP loan be forgiven in whole or in part?

Yes.

The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest.

75) How does a borrower get the entire PPP loan forgiven?

The borrower will not be responsible for any loan payment if:

1. The borrower uses all loan proceeds for forgivable purposes, and
2. Employee and compensation levels are maintained.

76) How is the forgiveness amount calculated?

The actual amount of loan forgiveness depends, in part, on payments made over the eight-week period following the date of the loan, including:

1. The total amount of payroll costs,
2. Payments of interest on mortgage obligations incurred before February 15, 2020,
3. Rent payments on leases dated before February 15, 2020, and
4. Utility payments under service agreements dated before February 15, 2020.

77) How much of the loan forgiveness must be attributable to payroll costs?

At least 75% of the loan forgiveness amount must be attributed to payroll costs. Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.

78) Why is forgiveness heavily weighted to the percentage of payroll costs, when the CARES Act allows a mix of payroll costs and other payments to determine loan forgiveness?

The April 2, 2020 Interim Final Rule states:

“[w]hile the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the [SBA] has determined that the non-payroll portion of the forgivable loan amount should be limited to



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effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.”

79) Do independent contractors count as employees for purposes of PPP loan forgiveness?

No.

Independent contractors can apply for a PPP loan on their own. They do not count for purposes of a borrower's PPP loan forgiveness calculation.

80) Can lenders rely on borrower documentation for loan forgiveness?

Yes.

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.

81) How does a lender submit a PPP loan or pool of PPP loans for advance purchase?

A lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report shall include:

1. PPP Application Form: ([SBA Form 2483](#))
2. Any supporting documentation submitted with the PPP Application Form,
3. PPP Lender's Application for 7(a) Loan Guaranty ([SBA Form 2484](#))
4. Any supporting documentation submitted with the PPP Lenders Application.
5. A detailed narrative explaining:
 - a. The assumptions used in determining the expected forgiveness amount,
 - b. Basis for those assumptions,
 - c. Alternative assumptions considered, and
 - d. Why alternative assumptions were not used.
6. Any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness, such as:
 - a. Payroll tax filings,
 - b. Cancelled checks, and
 - c. Other payment documentation.
7. Any additional information the SBA may require to determine whether the expected forgiveness amount is reasonable.

82) What is the maximum forgiveness amount?

The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans.

83) How quickly will the SBA purchase the forgiveness amount after bank submits the advance purchase report?

The SBA will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the SBA receives a complete report demonstrating that the expected forgiveness amount is reasonable.



84) Can SBA purchase some or all the loan forgiveness in advance?

Yes.

1. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period.
2. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend during the eight-week period after loan disbursement on:
 - a. Payroll costs,
 - b. Covered mortgage interest,
 - c. Covered rent, and
 - d. Covered utility payments.
3. At least 75 percent of the expected forgiveness amount shall be for payroll costs.

SECONDARY MARKET

85) Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold on the secondary market:

1. After the loan is fully disbursed.
2. At a premium or a discount to par value.

86) Will there be further guidance on secondary market sales of PPP loans?

SBA will issue guidance later regarding any advance purchase for loans sold in the secondary market.