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).

Further, on April 24, 2020, President Trump signed P.L. 116-139, the Paycheck Protection Program and Health Care Enhancement Act into law. As part of this $484 billion package aid package, Congress appropriated an additional $320 billion for the PPP. $30 billion of these funds are set aside for financial institutions such as community banks, Community Development Financial Institutions (CDFIs), and Minority Depository Institutions (MDIs) with assets totaling $10 billion or less. An additional $30 billion of these funds are set aside for financial institutions with assets totaling between $10 billion and $50 billion.

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 U.S. Treasury and SBA guidance that had been released by Wednesday May 6, 2020 at 2:00 p.m. EDT.

Paycheck Protection Program Data Summaries

Summary of Paycheck Protection Program Round 2 data as of 5:00 p.m. EDT, Tuesday, May 5, 2020.

<table>
<thead>
<tr>
<th>Lender Size</th>
<th>Approved Loans</th>
<th>Approved Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;$50B in Assets</td>
<td>1,119,860</td>
<td>$96,159,838,521</td>
</tr>
<tr>
<td>$10 B to $50 in Assets</td>
<td>339,110</td>
<td>$27,702,389,935</td>
</tr>
<tr>
<td>&lt;$10 B in Assets</td>
<td>919,087</td>
<td>$57,296,660,188</td>
</tr>
</tbody>
</table>
### Total:

<table>
<thead>
<tr>
<th>Total:</th>
<th>2,378,057</th>
<th>$181,158,888,644</th>
</tr>
</thead>
</table>

| # of Participating Lenders | 5,411 |

- On May 1, 2020, SBA released a breakdown of the loans made in Round Two to date, which can be found [HERE](#).
- On May 1, 2020, SBA released a list of all lenders participating in the PPP, which can be found [HERE](#).
- On April 16, 2020, SBA released a breakdown of the loans made in Round One, which can be found [HERE](#).

### 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.

### 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.

If a 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.

On April 23, 2020, the American Institute of Certified Public Accounts (AICPA) released suggested guidance for how a CPA should work with a lender. This guidance can be found HERE. They recommend that the CPA contacts the lender first, before conducting any work or providing an advisory opinion.

Loan Forgiveness

After disbursement of the loan, a borrower is eligible for loan forgiveness on up to eight weeks of covered expenses. 75% of funds used during the loan forgiveness period should be used for payroll-related costs. 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.

SBA has further indicated that they will issue additional guidance related to the loan forgiveness process.

Secondary Market

A lender may sell a loan into the secondary market after the loan is fully disbursed. The lender may only sell PPP loans to lenders participating in the PPP and that have a valid Form 750, Form 3506, or Form 3507. These are changes from the legislation, which required the lender to hold onto the loan until after the loan forgiveness period ended.

According to SBA, for participation sales in PPP loans, the originating lender must continue to hold the note, the loan documents and retain all servicing rights. The originating lender will be the party responsible to SBA with respect to all servicing actions, including requests for advance purchases and loan forgiveness, and will be the party eligible for the guarantee purchase of a PPP loan.

According to SBA, for whole loan sales in PPP loans, the purchasing lender will be responsible for all servicing actions, included loan forgiveness, and advance purchases. The purchasing lender will be the party eligible for the guarantee purchase of a PPP loan.

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

- US Treasury PPP Resources Webpage
- SBA PPP Resources Webpage
- Frequently Asked Questions on PPP (May 5, 2020) new

Interim Final Rules, Guidance Documents, and Procedural Notices

- Interim Final Rule (April 2, 2020)
- Interim Final Rule on Affiliation (April 3, 2020)
- Interim Final Rule - Additional Eligibility Criteria and Requirements for Certain Pledges of Loans (April, 20, 2020)
- Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility (April 24, 2020)
- Interim Final Rule on Additional Criterion for Seasonal Employees (April 27, 2020)
- Interim Final Rule on Disbursements (April 28, 2020)
- Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders (April 30, 2020)
- Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria (May 5, 2020) new
- Applicable Affiliation Rules
- SBA guidance on faith-based borrower eligibility
- How to Calculate Loan Amounts (April 24, 2020)
- Treasury Notice 2020-32: Deductibility of Expenses of PPP Loan Forgiveness (April 30, 2020)
- SBA Procedural Notice: Guidance on Participation Sales for Paycheck Protection Program Loans (April 24, 2020)
- SBA Procedural Notice: Guidance on Whole Loan Sales for Paycheck Protection Program Loans (May 1, 2020) new

PPP Loan Forms

- 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.
- PPP Lender Information Sheet
- PPP borrower Information Sheet
- Borrower Application Form (Updated April 2, 2020)
- New Lender Application Form (Federally Insured Depository Institutions, Federally Insured Credit Unions, Farm Credit System Institutions) (Submit to delegatedauthority@sba.gov)
- SBA’s Capital Access Financial System (CAFS)
- SBA Promissory Note (Form 147)

Data Summaries

- SBA PPP Loan Report: Round One (April 16, 2020)
- List of Participating Lenders (by state) (April 23, 2020)
- SBA PPP Loan Report: Second Round (May 3, 2020) new
Federal Reserve PPPLF Resources
- PPPLF Borrowing and Operational Documentation
- PPPLF Term Sheet
- Federal Reserve PPPLF FAQ

IRS Resources
- IRS Notice 2020-32, Deductability for Federal Income Tax on PPP Loan Forgiveness
- IRS CARES Act FAQ

FinCEN Resources
- FinCEN Paycheck Protection Program Frequently Asked Questions (FAQs)
- Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic: BSA obligations, Beneficial Ownership Collection on Existing Customers

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
- ABA CARES Act FAQ

Please note that the answers to the questions below reflect U.S. Treasury and SBA guidance that had been released by Wednesday, May 6, 2020 at 2:00 p.m. EDT. This FAQ is intended to be a resource to help decipher this existing SBA guidance.

U.S. Treasury and SBA have indicated they 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 guidance documents.

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

WHERE CAN I FIND UPDATES AND INFORMATION ABOUT THE PPP PROGRAM? ........................................20

HOW DO I BECOME A PPP LENDER? ........................................................................................................21

1) Who is eligible to make PPP loans? ........................................................................................................21
2) Can banks that are currently SBA lenders, but not 7(a) lenders, make PPP loans? Can non-SBA banks make PPP loans? ........................................................................................................21
3) What is a Certificate of Incumbency? Is there a template we should use? ........................................21
4) What paperwork does a qualified bank need to file before making PPP loans? ........................................21
5) Which lenders are ineligible to become PPP lenders? ..............................................................................21
6) Which lenders are eligible to become PPP lenders? ................................................................................22

Accessing E-Tran, Lender Gateway, and SBA Online Systems .................................................................22

7) I’m a Current 7(a) Lender and can’t access the E-Tran system. What do I do? .........................................22
8) Who can I contact at SBA about E-Tran problems? ................................................................................22
9) I submitted form 3506 and haven’t been added to the E-Tran system yet? What do I do? .................23

Processing Loan Applications and Loan Authorization Requests ..............................................................23

10) How do I submit loan authorization requests? ....................................................................................23
11) Are lenders required to use a separate SBA Authorization document to issue PPP loans? .................23
12) How do I process a loan through E-Tran? ............................................................................................23
13) How do I enter a Non-Profit into E-Tran? .............................................................................................23

Agents and Authorized Lender Representatives .......................................................................................24

14) Who can be an Agent? .........................................................................................................................24
15) Under the PPP program, who pays the fee to an agent who assists a borrower? .................................24
16) How should a bank work with an individual representing themselves as an agent on behalf of a borrower? ..................................................................................................................................24

Loan Application ........................................................................................................................................25

17) Is PPP “first-come, first-served?” ........................................................................................................25
18) Does Regulation B require a bank to participate in the PPP? ................................................................25
19) May a bank decide to offer PPP loans only to its existing customers? In the alternative, may a bank decide to give priority to applications from its existing customers? ...........................................................................25
20) Will loans originated under the PPP receive CRA credit? ...................................................................26
21) What forms need to be completed and submitted by the applicant? ....................................................26
22) What forms need to be completed by the lender? ..................................................................................26
23) Do lenders have to use a promissory note provided by SBA or may they use their own? ...............26
24) Is a Lender permitted to submit a PPP loan application to SBA through E-Tran before the Lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs? ................................................................. 27

25) If I submitted loan applications to SBA through E-Tran before reviewing the borrower’s documentation and payroll calculations, do I need to withdraw and resubmit the application? ........ 27

26) How do I amend or revise loan documents already entered into E-Tran? ................................................................. 27

**Reporting PPP Borrower Fraud** ......................................................................................................................................... 27

27) How do I report possible fraud in PPP applications? ........................................................................................................... 27

28) Should a bank file a Suspicious Activity Report (SAR) for instances where misuse of PPP loan funds is suspected? *(new)* ......................................................................................................................... 28

**Adverse Action Notices** .......................................................................................................................................................... 28

29) Is an adverse notice required if an applicant does not meet the SBA's program eligibility and underwriting requirements? ......................................................................................................................... 28

30) If we deny a PPP request for a company with $1 million or less in revenues and the application is in writing and/or received via our automated system, can both the statement of action taken and the disclosure of an applicant’s right to a statement of reasons be given verbally? ................................................................. 28

31) Is the same true for companies with over $1 million? ......................................................................................................................... 29

32) What if the loan would have been approved, had we not exhausted our allotted funds first? Can we, or should we, add a reason about the depleted funds being the reason for non-approval if the applicant would not qualify for any other of our programs? ......................................................................................................................... 29

33) Is an adverse action notice required given that funds were depleted? ......................................................................................................................... 29

**BORROWER ELIGIBILITY** .......................................................................................................................................................... 29

34) Can a borrower apply for more than one PPP loan? ......................................................................................................................... 29

35) Why are borrowers limited to one PPP loan? ......................................................................................................................... 30

**$20M Aggregate Loan Limit to Single Corporate Groups** ......................................................................................................................... 30

36) Can a single corporate group receive unlimited PPP loans? ......................................................................................................................... 30

37) How is a single corporate group defined? ......................................................................................................................... 30

38) When is this $20M aggregate loan limit effective? ......................................................................................................................... 30

39) What is the lender’s obligation to ascertain if a borrower is part of a single corporate group and has received more than $20M in aggregate PPP funds? ......................................................................................................................... 30

40) How does the $20M aggregate lending limit to single corporate group interact with the PPP affiliation rules? ......................................................................................................................... 30

41) Does the lender carry any liability or can the lender rely on borrower certification, attestation, and representation of compliance with the $20M aggregate lending limit? ......................................................................................................................... 30
Frequently Asked Questions about the SBA’s Paycheck Protection Program

42) How does the $20M aggregate loan limit effect lender obligations and the SBA loan guarantee? ................................................................. 31
43) Do lenders apply the “credit elsewhere test”?................................................................. 31
44) What are the eligibility criteria for small business borrowers? .................................................. 31
45) Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan? .......................................................................................... 31
46) What could make an otherwise eligible borrower ineligible for a PPP loan? .............................. 31
47) Is a small business owner who has pleaded guilty to a felony crime a very long time ago still eligible for the PPP? ............................................................................................. 32
48) Will I be approved for a PPP loan if my business is in bankruptcy? ........................................... 32
49) Why are household employers excluded? .................................................................................. 32
50) How is ineligibility determined? ............................................................................................. 32
51) Is there a worksheet to help determine a borrower’s affiliates and number of employees? .......... 33

Number of Employees .................................................................................................................. 33

52) Can a business still be eligible for a PPP loan if it has more than 500 employees? .................. 33
53) What are the categories of business that may have more than 500 employees? ...................... 33
54) Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP? ......................................................... 34
55) Does my business or nonprofit have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to participate in the PPP? ................................................................. 34
56) 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? ......................................................................................... 35
57) To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees? .................................................................................. 35
58) Do Student Workers count when determining the number of employees for PPP loan eligibility? (new) ........................................................................................................................................... 35
59) Can PPP loan recipients utilize exemptions based on the grounds provided in Federal nondiscrimination laws? (new) ........................................................................................................... 35

Affiliation .................................................................................................................................. 36

60) What is the affiliation analysis to determine whether a small business meets the size eligibility requirements? .................................................................................................................. 36
61) Are affiliates considered together for purposes of determining eligibility? ................................. 36
62) Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers? ..................................................................................... 36
63) Are borrowers required to apply SBA’s affiliation rules under 13 C.F.R. 121.301(f)? ......................... 36
64) The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business? ......................... 37
65) 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? ................................................................. 37
66) How do the $10 million cap and affiliation rules work for franchises? .............................................. 37
67) Is a franchise brand that has been denied listing in the directory eligible for PPP loans? ............ 37
68) How do the $10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)? 37
69) Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules? ......................................................................................................................................... 39

Nonprofits ........................................................................................................................................ 40
70) Are tax exempt nonprofits, such as churches, veterans organizations and tribal businesses, eligible for PPP loans? .................................................................................................................................... 40
71) Are other nonprofits, such as 501(c)(7), eligible for PPP loans? ...................................................... 41

Churches, Religious Nonprofits, and Faith-based Organizations .......................................................... 41
72) Churches and religious nonprofits are usually ineligible for SBA lending programs. How are they eligible for PPP loans? ........................................................................................................... 41
73) Are otherwise qualified faith-based organizations exempt from SBA’s affiliation rules? ............. 41
74) How does a faith-based organization claim the exemption to the SBA affiliation rule? ............ 41
75) Is there template Addendum A to claim a faith-based exemption to the SBA affiliation rule? .... 42

Banks, Lenders, and Financial Companies ............................................................................................. 42
76) Are banks and other financial businesses, such as finance companies and pawn shops, eligible to receive PPP loans? ................................................................................................................................... 42

Bank Directors and Shareholders ........................................................................................................... 43
77) Are eligible businesses owned by directors or shareholders of a PPP Lender Bank permitted to apply for a PPP Loan through the bank with which they are associated? ............................................................. 43
78) Can I ‘fast track’ PPP loan approvals for my bank directors and shareholders? ....................... 43
79) How does Regulation O (prohibition on loans to insiders) intersect with the extension of PPP loans to bank directors and shareholders? ...................................................................................................... 43
80) Under what circumstances does Federal Reserve Regulation O (prohibition on loans to insiders) apply to the PPP loans to a bank insider or their related interest? (new) ............................................... 44

© 2020 American Bankers Association, Washington, D.C.
81) Does the Federal Reserve’s interim final rule change Regulation O restrictions on loans to bank executive officers and related interests? *(new)* ................................................................. 44

82) When does the Federal Reserve Board exception to Regulation O for PPP loans expire? *(new)* . 44

83) Does the Federal Reserve’s temporary exemption from Regulation O for PPP loans that meet SBA’s insider lending restrictions include exemption from Regulation O’s monthly and annual reporting requirements? *(new)* ................................................................. 44

**Agriculture and Farm-Related Business** ................................................................. 45

84) Is agriculture eligible to receive PPP loans? .................................................................................... 45

85) Is agriculture eligible to receive Economic Injury Disaster Loan (EIDL) funds? ............................. 45

86) Are H-2A and H-2B workers counted as employees for PPP eligibility and calculation of payroll costs? ................................................................................................................. 45

87) What documentation is needed for sole proprietor farms? ............................................................. 45

88) Is there other documentation that can be used if a sole proprietor farm does not have this documentation? ................................................................................................................. 46

**Cannabis Related Businesses** .............................................................................................. 46

89) Are cannabis businesses ineligible for PPP loans? ................................................................. 46

**Legal Gambling and Gaming Businesses** .................................................................................. 47

90) Are businesses that receive revenue from legal gaming eligible for a PPP Loan? ....................... 47

**US-Based, Foreign Owned Companies** .................................................................................... 47

91) Are foreign-owned, US-based companies, or a companies owned by a non-US citizens, with US employees and US operations eligible for PPP loans? ................................................................................................................. 47

**Partnerships, Limited Liability Companies (LLCs), Sole Proprietors, Independent Contractors, and Self-Employed** ................................................................................................................. 47

92) Are sole proprietorships, independent contractors, and the self-employed eligible for PPP loans? 47

93) What documentation is needed from individuals applying as a sole proprietorship, independent contractor, or self-employed? ................................................................................................................. 48

94) What alternative documentation is acceptable for individuals that do not have the formal documents and records listed in FAQ 93? ................................................................................................................. 48

95) What documentation is needed for a self-employed applicant who was not in operation in 2019 and will not file a 2019 Schedule C? ................................................................................................................. 48

96) Will receipt of PPP funds interfere with an individual applicant’s eligibility for unemployment assistance? ................................................................................................................. 48

97) Are partnerships eligible for PPP loans? .................................................................................... 48

98) Are partnerships and LLCs limited to one PPP loan? .................................................................... 48
Frequently Asked Questions about the SBA’s Paycheck Protection Program

99) Can a partner in a partnership apply for a PPP as self-employed? ............................................49

100) Why aren’t partners allowed to apply as self-employed? ..........................................................49

Seasonal Business ..................................................................................................................................49

101) My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business’s operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible? ....................49

Hedge Funds and Private Equity Firms .................................................................................................49

102) Is a hedge fund or private equity firm eligible for a PPP loan? ....................................................49

103) Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan? .................................................................................................................49

Hospitals ................................................................................................................................................50

104) Is a hospital owned by governmental entities eligible for a PPP loan? ............................................50

105) Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as “nonprofit organizations” under section 1102 of the CARES Act? (new) ................................................50

E-SIGNATURE, DOCUMENTATION AND BORROWER CERTIFICATION ........................................50

106) Can I use e-signatures or e-consents if a borrower has multiple owners? ....................................50

107) May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower? ........................................................................................................................................50

108) Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act? ......................................................................................................................................50

109) The SBA FAQ allowing scanned copies of signed PPP loan applications and promissory notes requires the bank “to take appropriate steps to ensure the proper party has executed the document.” The easy solution is to ask for a copy of the signer’s photo identification or driver’s license. ..........51

110) Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Form, in order to complete implementation of their online portals? ......................................................................................51

111) What certifications need to be made? ..............................................................................................52

112) Who can certify on behalf of the borrower? ....................................................................................52

113) What is the bank’s liability for relying on applicant attestations? ....................................................53

114) 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? ........................................................................................................53

Certifications by Seasonal Employer ..................................................................................................54

115) Can a seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by
Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form?  

116) Do seasonal employers skip the monthly payroll instruction on page 3 of the PPP Borrower Application?  

Borrower Certification of Economic Need

117) Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?  

118) Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?  

119) I heard a rumor that borrowers with more than $2M in PPP loans will be audited by SBA, but I don’t see it in the rules or guidance. Is this true?  

120) Will SBA review individual PPP loan files to review borrower need?  

121) Will the outcome of SBA’s loan review affect the SBA loan guarantee?  

122) Is there a safe harbor for lenders who rely on borrower certifications and attestations of need?  

UNDERWRITING PPP LOANS

123) What is required for PPP loan underwriting?  

124) What are a bank’s underwriting obligations?  

125) I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?  

BANK SECRECY ACT (BSA) COMPLIANCE

126) What are the BSA expectations for insured depository institutions?  

127) Do PPP loans require BSA reverification for existing customers?  

128) How should new FinCEN Contacts be handled?  

129) Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?  

130) Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender’s obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?  

How are the loan amounts, terms, and conditions determined?  

131) What are the loan terms and conditions?  

132) What processing fee will SBA pay PPP lenders?
133) Are there fee waivers? ................................................................. 59
134) How should banks recognize loan origination fees as income for call report purposes? ............... 59

REFINANCING AN SBA ECONOMIC INJURY DISASTER LOAN (EIDL) ........................................ 59
135) Can a borrower refinance an existing SBA EIDL loan into a PPP Loan? ........................................ 59
136) Can an EIDL be refinanced into a PPP loan even if it was not used for payroll costs? ................. 60
137) How is the EIDL $10,000 advance calculated into the PPP loan? ............................................ 60
138) How does an EIDL refinance into a PPP loan effect the PPP loan forgiveness determination? .... 60

CALCULATING PAYROLL COSTS ......................................................................................... 60
139) What qualifies as “payroll costs” for a small business? .......................................................... 60
140) What is excluded from the definition of payroll costs? .......................................................... 60
141) Do independent contractors count as employees in PPP loan calculations? ......................... 60
142) Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower’s payroll costs? ............................................. 61
143) The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value? ................................................................................................................................. 61
144) Do PPP loans cover paid sick leave? ......................................................................................... 61
145) If an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes, how do they report payroll costs and taxes? ......................................................................................................................... 62
146) What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts? ................................................................................................. 62
147) How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven? ................................................................................................................................. 63
148) 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. ... 63

Partnerships, Limited Liability Companies (LLCs), Sole Proprietors, Independent Contractors, and Self-Employed ......................................................................................................................... 64
149) What qualifies as “payroll costs” for an independent contractor or sole proprietor? ................. 64

CALCULATING THE LOAN AMOUNT ................................................................................... 64
150) What is the maximum PPP loan amount? ................................................................................... 64
151) Should a borrower apply for less than their maximum loan amount? ........................................ 64
152) What alternative documentation can be provided for the purpose of substantiating the applied-for PPP loan amount? ................................................................................................................................. 64
Small Business ................................................................................................................................................. 64

153) What is the payroll-based calculation to determine loan amount for a small business? ............... 64

Self-Employed WITHOUT Employees ........................................................................................................... 65

154) How do I calculate the maximum amount a self-employed individual without employees can borrow and what documentation is required? ...................................................................................... 65

Self-Employed WITH Employees ..................................................................................................................... 66

155) How do I calculate the maximum amount a self-employed with employees can borrow and what documentation is required? .............................................................................................................. 66

156) I am a self-employed individual who reports my income on IRS Form 1040 Schedule F. What documentation must I provide in place of Schedule C and how should my maximum loan amount be determined (up to $10 million)? ........................................................................................................... 67

Nonprofit Organization – EXCLUDING Religious Institutions, Veterans Organizations, and Tribal Businesses ............................................................................................................................................ 67

157) How is the maximum PPP loan amount calculated for eligible nonprofit organizations (up to $10 million)? ................................................................................................................................. 67

Nonprofit Organization – Religious Institutions, Veterans Organizations, and Tribal Businesses ...... 68

158) How is the maximum PPP loan amount calculated for eligible nonprofit religious institutions, veterans organizations, and tribal businesses (up to $10 million)? .................................................................................... 68

Limited Liability Corporation ............................................................................................................................. 69

159) I am an LLC owner. Which set of maximum loan amount instructions apply to me? ............... 69

Partnerships and S Corps .................................................................................................................................... 69

160) How do partnerships apply for PPP loans and how is the maximum PPP loan amount calculated for partnerships (up to $10 million)? Should partners’ self-employment income be included on the business entity level PPP loan application or on separate PPP loan applications for each partner? ..... 69

161) How is the maximum PPP loan amount calculated for S corporations and C corporations (up to $10 million)? .................................................................................................................................................... 70

Seasonal Employers .............................................................................................................................................. 71

162) How does this rule affect the calculation of the maximum loan amount for seasonal employers? 71

163) If a seasonal business was dormant or not fully operating as of February 15, 2020, is it still eligible? ..................................................................................................................................................................... 71

164) Is this alternative calculation period limited to seasonal employers? ................................................... 71

INTEREST RATE ON PPP LOANS ........................................................................................................................ 72

165) What is the interest rate on a PPP loan? ....................................................................................................... 72
Frequently Asked Questions about the SBA's Paycheck Protection Program

166) Why isn’t the interest rate 4% as stated in the CARES Act? Why isn’t the interest rate 0.5% as first reported? .......................................................... 72

PPP LOAN MATURITY DATE .......................................................... 72

167) What is the maturity date on a PPP loan? ................................................................... 72
168) Why isn’t the loan maturity date 10 years as stated in the CARES Act? .................. 72

DEFERRAL OF LOAN PAYMENTS: 6 MONTHS ......................................................... 72

169) When does the borrower start paying principal and interest on a PPP loan? ... 72
170) How long can PPP loan payments be deferred? ......................................................... 72
171) Why can’t PPP loan payments be deferred for up to one year as stated in the CARES Act? ...... 73

USE OF PPP LOAN FUNDS .................................................................................. 73

172) How can PPP loans be used by small businesses? ...................................................... 73
173) What are acceptable utility payments? How is the word “utilities” defined? .............. 73
174) How can PPP loans be used by individuals with income from self-employment who file a 2019 Form 1040, Schedule C? ................................................................. 73
175) Must a self-employed borrower use 2019 Form 1040 Schedule C to document expenses and use of funds? Can other IRS forms or documentation be used? .................................................. 74
176) Can a self-employed borrower include expenses from 2020? .................................... 75
177) What documentation is needed for self-employed individuals who were not in operation in 2019, but were in operation in February 2020, and will not file 2019 taxes? ........................................... 75
178) Are there any other restrictions on how individuals with income from self-employment who file a 2019 Form 1040, Schedule C can use PPP loan proceeds? ...................... 75
179) What happens if PPP loan funds are misused? ......................................................... 75

LOAN CLOSE, DISBURSEMENT, REPORTING, AND LENDER FEES ........................................................................... 76

180) When must the loan be disbursed? ........................................................................... 76
181) What happens if the 10th day is a non-business day? .............................................. 76
182) Can a borrower take multiple draws from a PPP loan and delay the start of the eight week covered period? .................................................................................. 76
183) When is loan approval? When the bank accepts the loan from the borrower? When SBA accepts the loan? .................................................................................................. 76
184) What happens if I have a loan number, but have not fully disbursed the loan or opted to structure the disbursement over 60-days? .......................................................... 76
185) What happens if a loan not disbursed within 10-day limit because the borrower has not completed their documentation, or not returned a signed promissory note, etc.? .................. 76
186) How do I disburse the portion of the PPP loan intended to refinance an EIDL? ........ 76
187) How will lenders report to SBA that a loan has been disbursed and receive the lender fee? .......................... 76
188) Where do I get an SBA form 1502? ........................................................................................................ 77
189) When must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed? ................................................................................................................................. 77
190) Are there instances where a lender will not receive a lender fee? ................................................................. 77
191) What information does the lender need to provide to the SBA to receive the lender fee? ......................... 77
192) How does a lender report a cancelled or voluntarily terminated PPP loan to SBA? .................................... 77

LOAN FORGIVENESS ...................................................................................................................................... 77

193) Can a PPP loan be forgiven in whole or in part? ......................................................................................... 77
194) How does a borrower get the entire PPP loan forgiven? ........................................................................... 78
195) How is the forgiveness amount calculated? ................................................................................................. 78
196) How much of the loan forgiveness must be attributable to payroll costs? .................................................. 78
197) 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? ........................................... 78
198) Do independent contractors count as employees for purposes of PPP loan forgiveness? ....................... 78
199) Can lenders rely on borrower documentation for loan forgiveness? ......................................................... 78
200) How does a lender submit a PPP loan or pool of PPP loans for advance purchase? ................................. 78
201) What is the maximum forgiveness amount? ................................................................................................. 79
202) How quickly will the SBA purchase the forgiveness amount after bank submits the advance purchase report? ........................................................................................................................................ 79
203) Can SBA purchase some or all the loan forgiveness in advance? ............................................................... 79
204) The amount of forgiveness of a PPP loan depends on the borrower’s payroll costs over an eight-week period; when does that eight-week period begin? ........................................................................ 79
205) What amounts shall be eligible for forgiveness for self-employed applicants? ........................................ 80
206) Why is the PPP loan amount and forgiveness for self-employed people based on 2019 net profits? ................................................................................................................................... 80
207) What documentation is the borrower required to submit to the lender with the request for loan forgiveness? ...................................................................................................................................... 81
208) Will a borrower’s PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA’s implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer? (new) ........................................... 82
209) Will a former employee’s rejection of an offer of re-employment effect their eligibility for unemployment compensation? (new) .............................................................................................................................................. 82
IRS Treatment of PPP Loan Forgiveness ................................................................. 82
210) Is PPP loan forgiveness taxable by IRS? ......................................................... 82
211) Is PPP loan forgiveness reportable by the bank on a 1099-C? .................................. 82
212) What’s the impact of IRS Notice 2020-32 on the tax treatment of PPP loan forgiveness? (new) 82
213) How is there a tax impact if the CARES Act specifies that PPP forgiveness will not be subject to federal taxes? (new) ............................................................. 83

SECONDARY MARKET .................................................................................. 84
214) Can PPP loans be sold into the secondary market? ........................................ 84
215) Can a lender sell a PPP loan into the secondary market? ................................ 84

Loan Participations .................................................................................. 84
216) Can a PPP lender sell participations in PPP loans? ........................................ 84
217) How do I know if a Lender is participating in the PPP program for purposes of buying a PPP loan participation? ................................................................. 84
218) What must an originating lender do before selling a participation? .................... 84
219) Who holds the servicing rights on PPP loan participations? ............................. 84
220) What are the ongoing obligations of the originating lender after the loan is sold? ................................................................. 84
221) Who do I contact if I have further questions about PPP participations and secondary market sales? ................................................................. 84

Whole Loan Sales .................................................................................. 85
222) Who can buy PPP whole loans? (new) .......................................................... 85
223) Is SBA’s prior consent needed before whole loans can be sold? (new) .................. 85
224) Who services the loan? (new) ........................................................................... 85
225) May the originating lender retain subservicing rights? (new) .............................. 85
226) What are the obligations and liabilities of the purchasing lender of PPP whole loans? (new) ................................. 85
227) How does the originating lender notify SBA of a sale of PPP whole loans? (new) ....... 85
228) Who do I contact with questions about PPP whole loan sales? (new) ................. 86

PAYMENT PROTECTION PROGRAM LENDING FACILITY (PPPLF) ............. 86
229) What is the status of the Payment Protection Program Lending Facility (“PPPL Facility”) and how will it operate? ............................................................................. 86
230) Are there fees associated with the program? ....................................................... 86
231) What are the terms of the loan? ........................................................................ 86
232) What happens if the borrower defaults, is forgiven, or sold? .............................. 86
233) Because PPP covered loans that are pledged as collateral to the PPPL Facility remain on balance sheet, will banks need to hold capital against them? ................................................................. 87

234) When will the PPPL Facility end? ........................................................................................................ 87

235) Where can I find the PPPL Facility FAQs and documents? ............................................................... 87
WHERE CAN I FIND UPDATES AND INFORMATION ABOUT THE PPP PROGRAM?

American Bankers Association (ABA) Resources:
ABA is making PPP resources available to members and non-member financial institutions at: aba.com/SBAPPP.

Email your questions and comments about the PPP lending program to ppp@aba.com

General CoVID-19 information and incident response materials can be found at: aba.com/coronavirus.

Small Business Administration (SBA):
SBA resources are posted at www.sba.gov/paycheckprotection

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.

Questions about the SBA PPP program?
   Contact 7aPaycheckLoanProgramQuestions@sba.gov

Questions on E-TRAN, CAFS, Lender Gateway, or applications?
   Call the Lender Assistance Hotline: (833) 572-0502.

Need assistance with a loan after it has been entered into SBA’s electronic system?
   Contact 7aQuestions@sba.gov.

Questions on PPP Secondary Market?
   Contact John Wade, Chief of Secondary Markets at john.wade@sba.gov

US Department of the Treasury:
The US Treasury is posting guidance, forms, and FAQs on their webpage dedicated to CARES Act small business assistance.
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:
   1. File SBA form 3506 for Federally Insured Depository Institutions with the SBA to receive the delegated authority before making PPP loans, and
   2. Attach 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.

3) What is a Certificate of Incumbency? Is there a template we should use?
Generally, a certificate of incumbency:
   1. Identifies current directors and shareholders in a corporation or LLC., and
   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.
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 that aligns with local and state law.

4) 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 for Federally Insured Depository Institutions (SBA Form 3506) unless the institution is:
   1. Currently designated in Troubled Condition by their primary federal regulator, or
   2. Subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices.

5) 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.
6) 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:
   a. The requirements under the Bank Secrecy Act (BSA) and its implementing regulations as a federally regulated financial institution, or
   b. The 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;
   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
      i. 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
      ii. 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.

Accessing E-Tran, Lender Gateway, and SBA Online Systems

7) I’m a Current 7(a) Lender and can’t access the E-Tran 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

If you have questions you may contact the Lender Assistance Hotline: (833) 572-0502

8) Who can I contact at SBA about E-Tran problems?
The SBA has established a lender hotline for those having issues with SBA’s E-Tran system:
Call 1-833-572-0502

You may also email SBA’s Sheri McConville at SBA HQ sherimcconville@sba.gov. Sheri is leading a team at SBA HQ addressing E-Tran issues.
9) I submitted form 3506 and haven’t been added to the E-Tran system yet? What do I do?
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.

Processing Loan Applications and Loan Authorization Requests

10) How do I submit loan authorization requests?
If you would like to submit loan authorization requests via our SBA’s Lender Gateway, click here and follow the steps below:
3. Create an account on SBA Connect.
4. Request authorization to the Paycheck Protection Lender Gateway by providing your FRS, FDIC, or NCUA number as well as your authorization number.
5. Proceed to the Lender Gateway to begin submitting loan authorization requests.

11) Are lenders required to use a separate SBA Authorization document to issue PPP loans?
No.
A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (Lender Application Form Loan Guaranty) to issue PPP loans and receive a loan number for each originated PPP loan. This requirement is satisfied by a lender when the lender completes the process of submitting a loan through the E-Tran system; no transmission or retention of a physical copy of Form 2484 is required.

The decision not to require a separate SBA Authorization in order to ensure that critical PPP loans are disbursed as efficiently as practicable.

12) How do I process a loan through E-Tran?
SBA advises that when a lender enters a loan intro E-Tran, make sure they choose “PPP” from the first drop down menu.

DO NOT CHOOSE “7(a)”.
Choosing 7(a), will cause lenders to face restrictions that aren’t relevant to PPP.

13) How do I enter a Non-Profit into E-Tran?
E-Tran now has a drop down to select Non-Profit. The system will allow nonprofits in the principal section and set the ownership percentage as 0%.
For the borrower form, putting the name of the Non-Profit as the owner, and inserting the EIN for the Non-Profit in that area of Form 2483 (borrower application). For Non-Profits, the EIN of the owner is effectively the same as the EIN for the Applicant.

**AGENTS AND AUTHORIZED LENDER REPRESENTATIVES**

14) 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.

15) 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.

16) How should a bank work with an individual representing themselves as an agent on behalf of a borrower?

Working with the banking industry, including ABA, the American Institute of CPAs (AICPA) developed recommendations to guide firm-lender relationships related to CPA firms assisting PPP borrowers as an agent.

CPA professionals can add significant value to the PPP loan application process for both lenders and small businesses by assisting and advising their clients in the completion of these applications. Based on this AICPA encourages CPA firms to offer loan application advisory and assistance services in support of their small business clients.

The CARES Act does not require a formal agency relationship between the small business and the CPA as part of the loan assistance and advisory services. It does, however, state that the agency fees are to be paid out of the lender fee.

AICPA Recommendations for Firm– Lender Relationship:
1. To help advance a clear and orderly loan application process, AICPA recommends the CPA contact the lender prior to offering assistance and performing advisory work to the client. This will ensure the lender has agreed to compensate the CPA firm for its service.

2. If the lender agrees to compensate the CPA firm for its service, the relationship should be documented and disclosed to the small business.
   a. Documentation could take the form of a letter, sent by the CPA to his/her client, that describes the services to be performed by the CPA firm to assist and advise the client on the appropriate completion of the application.
   b. The letter could include the following:
      i. Compiling payroll reports necessary to calculate average monthly payroll costs (i.e., PPP-compliant payroll cost report or master payroll report or other documentation relating to compensation and other eligible payroll costs),
      ii. Calculating average monthly payroll costs in accordance with PPP guidance, and
      iii. Reviewing final application before submission

Resource: AICPA Firm-Lender recommendations and Press Release

LOAN APPLICATION

17) Is PPP “first-come, first-served?”
Yes.

18) Does Regulation B require a bank to participate in the PPP?
Regulation B does not require a bank to participate in any particular loan program. However, if a bank decides to participate in a loan program, it must do so consistent with Regulation B and any applicable state fair lending laws.

19) May a bank decide to offer PPP loans only to its existing customers? In the alternative, may a bank decide to give priority to applications from its existing customers?
Generally, Regulation B does not expressly prohibit a bank from limiting PPP loans to existing customers, or prioritizing applications from existing customers.

Regulation B prohibits a bank from discriminating against an applicant, or discouraging a person from applying, on a prohibited basis, e.g., race, sex, national origin, etc. The banking agencies also interpret Regulation B to prohibit discrimination based on a proxy for a prohibited basis. Being an existing customer of the bank is not a prohibited basis under Regulation B, and it does not appear to be a proxy for a prohibited basis.

However, a bank that wants to limit PPP loans to existing customers, or to prioritize applications from those customers, should first discuss such policies with its compliance and legal team. As with all bank policies, consistent application is important. If exceptions to policy are permitted, they should be documented based on objective business reasons. Exceptions should be monitored to help ensure that the bank does not inadvertently disfavor applicants on a prohibited basis.
Finally, regulators routinely examine banks for fair lending, and a fair lending exam may include a review for disparate impact. Disparate impact occurs when a bank uses a neutral policy that disproportionately affects one or more protected classes, and the policy is not necessary to achieve a business objective or the business objective could be achieved through a less discriminatory alternative. A bank that limits PPP loans to its existing customers should discuss any potential for disparate impact with its compliance and legal team and document its business reasons for the policy.

20) Will loans originated under the PPP receive CRA credit?
In most cases, yes. According to existing examination guidance as well as the March 19, 2020 Interagency Statement on CRA Consideration for Activities in Response to COVID-19, loans that benefit small businesses and small farms impacted by COVID-19 serve the long-term interest of communities and the financial system.
- Loans to for-profit businesses in amounts of $1 million or less are considered small business loans in CRA evaluations and will be considered as such under the lending test.
- PPP loans to small businesses could receive consideration as innovative or flexible lending practices.
- Loans to businesses greater than $1 million to small businesses that create or retain jobs would qualify as community development loans under:
  - Economic development if the loans create or retain jobs, or
  - Revitalization/stabilization if the loans benefit primarily low- and moderate-income areas or distressed middle-income areas.

21) 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.

22) 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.

23) Do lenders have to use a promissory note provided by SBA or may they use their own?
Lenders may use their own promissory note or an SBA form of promissory note.

The SBA Form 147 can be downloaded here.

Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with:

1. Sections 1102 and 1106 of the CARES Act,
2. the PPP Interim Final Rule and guidance, and
3. SBA Form 2484 (Lender Application Form Paycheck Protection Program Loan Guaranty).
24) Is a Lender permitted to submit a PPP loan application to SBA through E-Tran before the Lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs?

No.

Before a Lender submits a PPP loan through E-Tran, the Lender must have:

1. Collected the information and certifications contained in the Borrower Application Form, and
2. Fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the PPP Interim Final Rule.

Please refer to the SBA’s first Interim Final Rule (April 3, 2020) and SBA FAQ #1 for more information on the Lender’s responsibility to confirm payroll costs.

25) If I submitted loan applications to SBA through E-Tran before reviewing the borrower’s documentation and payroll calculations, do I need to withdraw and resubmit the application?

No.

Lenders who did not understand that these steps are required before submission to E-Tran do not need withdraw applications submitted to E-Tran before April 14, 2020, but must fulfill Lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.

26) How do I amend or revise loan documents already entered into E-Tran?

Some SBA systems allow loan documents to be amended. Amendments should be completed as soon as practicable and not later than loan closing.

If you need assistance with a loan after it has been entered into SBA’s electronic system, contact 7aQuestions@sba.gov

Reporting PPP Borrower Fraud

27) How do I report possible fraud in PPP applications?

There are no special protocols established for reporting suspected fraud under the PPP.

- **SBA.** The SBA has a form for reporting suspected fraud, found at: https://www.sba.gov/node/368931.

- **FinCEN.** Banks should also consider filing a Suspicious Activity Report (SAR) with FinCEN. While FinCEN has not provided specific instructions for filing a SAR related to PPP, it would make sense to include the term “Payment Protection Program” or “PPP” as well as “Small Business Administration” or “SBA” in the narrative to help FinCEN track these instances.

- **Department of Justice.** In addition, the Department of Justice has set up a task force through U.S. Attorneys’ offices throughout the United States to track fraud related to the pandemic (see https://www.justice.gov/coronavirus).
28) Should a bank file a Suspicious Activity Report (SAR) for instances where misuse of PPP loan funds is suspected? (new)

FinCEN has not issued instructions on PPP fraud specifically, and so a bank would need to make its own determination on when to file a SAR for suspected fraudulent use, or misuse, of PPP funds just as it would in any instance where a SAR suspects something inappropriate. Since the intentional use of PPP funds for unauthorized purposes could give rise to a finding of fraud under SBA’s statutory authority under the CARES Act, the misuse of funds would merit a SAR filing.

Also, given recent statements from US Treasury and SBA about auditing loans and scrutinizing borrower certifications of need, a bank’s inclination to file a SAR may be appropriate. If the bank does file a SAR, it would help to include PPP or Payment Protection Program in the narrative.

Adverse Action Notices

29) Is an adverse notice required if an applicant does not meet the SBA’s program eligibility and underwriting requirements?

The SBA PPP Interim Final Rule states that “Each lender’s underwriting obligation under the PPP is limited to the items above and reviewing the “Paycheck Protection Application Form.” Also, Regulation B provides an exception to adverse action for “[a] refusal to extend credit because applicable law prohibits the creditor from extending the credit requested...” (12 CFR § 1002.2(c)(2)(iv).)

A bank that declines an application for the PPP program must follow Regulation B’s rules for adverse action, which are somewhat relaxed for business applicants. The SBA’s Interim Final Rule explains what is necessary to obtain an SBA guarantee on the loan—the IFR does not appear to override or repeal ECOA and Regulation B. For similar reasons, it is unclear whether a bank could rely on § 1002.2(c)(2)(iv) to avoid giving notice of action taken. SBA’s IFR does not appear to be a law prohibiting the lender from making a loan to a business. Instead, the IFR outlines the specific conditions under which SBA will guarantee a particular type of business loan.

30) If we deny a PPP request for a company with $1 million or less in revenues and the application is in writing and/or received via our automated system, can both the statement of action taken and the disclosure of an applicant’s right to a statement of reasons be given verbally?

Yes.

For business credit applicants, the requirements for adverse action notices are somewhat less stringent than for consumer credit. For a business applicant with revenues of $1 million or less, the bank must still provide notice of action taken within specific time frames, (e.g., within 30 days of receipt of a complete application), but may provide the notice orally instead of in writing.

The bank has the option, under § 1002.9(a)(3)(i)(B), to either disclose at the time of application that the applicant has a right to the reasons for denial, or to provide that disclosure orally when the bank notifies the applicant of the action taken.
31) Is the same true for companies with over $1 million?
Yes.

If the business applicant's revenues exceed $1 million, the bank may provide notice within a reasonable time of taking action, the notice may be oral, and the bank need only provide specific reasons for denial upon the applicant's written request. See 12 CFR § 1002.9(a)(3).

32) What if the loan would have been approved, had we not exhausted our allotted funds first? Can we, or should we, add a reason about the depleted funds being the reason for non-approval if the applicant would not qualify for any other of our programs?
Yes.

This reason would be appropriate. Adverse action reasons do not necessarily always have to pertain to the borrower’s creditworthiness: it can relate to issues outside the borrower’s control, such as an inadequate appraisal or, as in this case, a lack of funding.

33) Is an adverse action notice required given that funds were depleted?
Regulation B provides that adverse action occurs when a creditor refuses to grant credit in substantially the amount or on substantially the terms requested in an application, unless the creditor makes a counteroffer and the applicant accepts it. (12 CFR 1002.2(c)(1).) On the other hand, adverse action does not occur when an applicant requests a type of credit that the creditor does not offer. (12 CFR 1002.2(c)(2)(v).)

Banks should consult with their compliance and legal teams when considering whether to provide adverse action notices for applications the bank takes while SBA funds are depleted and SBA is not accepting PPP applications. Arguably, the PPP loan program is a “type of credit” that a bank does not offer when SBA is not accepting PPP applications. Under this approach, an adverse action notice is not required.

However, a regulator may view this scenario as adverse action – because they may view the “type of credit” as commercial credit, while the PPP program represents specific terms the applicant requested, e.g., a fixed rate and loan forgiveness as outlined in the PPP program, and the creditor declined to provide those terms. Regulation B Comment 1002.2(c)(2)(v)-1 states that as between “type of credit” and “terms,” “[w]hen an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of down payment), a denial of the application for that reason is adverse action” unless a counteroffer is made and accepted.

BORROWER ELIGIBILITY
34) Can a borrower apply for more than one PPP loan?
No.
An eligible borrower may not receive more than one PPP loan.
35) 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.

$20M Aggregate Loan Limit to Single Corporate Groups
36) Can a single corporate group receive unlimited PPP loans?
No.
Businesses that are part of a single corporate group shall in no event receive more than $20,000,000 of PPP loans in the aggregate to preserve the limited resources available to the PPP program, and in light of the previous lapse of PPP appropriations and the high demand for PPP loans.

37) How is a single corporate group defined?
For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.

38) When is this $20M aggregate loan limit effective?
This limitation shall be immediately effective with respect to any loan that has not yet been fully disbursed as of April 30, 2020.

39) What is the lender’s obligation to ascertain if a borrower is part of a single corporate group and has received more than $20M in aggregate PPP funds?
It is the responsibility of a PPP loan applicant to:

1. Notify the lender if the applicant has applied for or received aggregate PPP loans in excess of $20M, and
2. Withdraw or request cancellation of any pending PPP loan application, or approved PPP loan, not in compliance with the $20M aggregate loan limit.

Failure by the applicant to notify, cancel, and withdraw will be regarded as a use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness.

40) How does the $20M aggregate lending limit to single corporate group interact with the PPP affiliation rules?
SBA’s affiliation rules, which relate to an applicant’s eligibility for PPP loans, and any waiver of those rules under the CARES Act, continue to apply independent of this limitation. Businesses are subject to the $20M aggregate loan limit even if the businesses are eligible for the waiver-of-affiliation provision under the CARES Act or are otherwise not considered to be affiliates under SBA’s affiliation rules.

41) Does the lender carry any liability or cab the lender rely on borrower certification, attestation, and representation of compliance with the $20M aggregate lending limit?
A lender may rely on an applicant’s representation concerning the applicant’s compliance with the $20M aggregate lending limit.
42) How does the $20M aggregate loan limit effect lender obligations and the SBA loan guarantee?
This rule has no effect on lender obligations required to obtain an SBA guarantee for PPP loans.

43) 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.

44) 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 whose principal place of residence is in the United States;
   3. They were in operation on February 15, 2020, and had
      a. Employees for whom they paid salaries and payroll taxes, or
      b. Paid independent contractors, as reported on an IRS Form 1099-MISC.

45) Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?
Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership.
   1. Where there is a change in ownership effectuated through a purchase of substantially all assets of a business that was in operation on February 15:
      a. The business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number, and
      b. Even if the acquiring business was not in operation until after February 15, 2020.
    2. If the acquiring business has maintained the operations of the pre-sale business:
       a. The acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application,
       b. Except where the pre-sale business had applied for and received a PPP loan.

46) 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.

47) Is a small business owner who has pleaded guilty to a felony crime a very long time ago still eligible for the PPP?

Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant:

1. Is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or

2. Within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

48) Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan.

- If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant’s obligation to notify the lender and request cancellation of the application.
- Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

SBA and US Treasury determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy.

The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant’s representation concerning the applicant’s or an owner of the applicant’s involvement in a bankruptcy proceeding.

49) 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.

50) How is ineligibility determined?

- Businesses that are ineligible for PPP loans are identified in 13 CFR 120.110, and
- Described in SBA’s Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2.
Frequently Asked Questions about the SBA’s Paycheck Protection Program

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

51) Is there a worksheet to help determine a borrower’s affiliates and number of employees?

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.

Number of Employees

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

Yes. A small business can be an eligible borrower even if they have more than 500 employees 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), Subject to SBA’s affiliation rules under 13 CFR 121.301(f) unless specifically waived in the CARES Act.
4. A business that meets the SBA employee-based or revenue-based size standard corresponding to its primary industry. Go to www.sba.gov/size for the industry size standards, and
5. A business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA’s “alternative size standard” as of March 27, 2020:
   a. maximum tangible net worth of the business is not more than $15 million; and
   b. the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million.

53) What are the categories of business that may have more than 500 employees?

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

For PPP, 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;
2. Any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and

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

54) Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. required to have 500 or fewer employees to be eligible borrowers in the PPP?

No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632.

A business can qualify if it meets the:
1. SBA employee-based size standard, or
2. SBA revenue-based size standard corresponding to its primary industry.

Go to www.sba.gov/size for the industry size standards.

Additionally, a business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA’s “alternative size standard” as of March 27, 2020:
1. Maximum tangible net worth of the business is not more than $15 million; and
2. The average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million.

A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for PPP loans on the Borrower Application Form, unless otherwise ineligible.

55) Does my business or nonprofit have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to participate in the PPP?

No. In addition to small business concerns, a business is eligible for a PPP loan if:
1. The business has 500 or fewer employees whose principal place of residence is in the United States, OR
2. The business meets the SBA employee-based size standards for the industry in which it operates (if applicable).

Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that:
1. Have 500 or fewer employees whose principal place of residence is in the United States, OR
2. Meet the SBA employee-based size standards for the industry in which they operate.

56) 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? The SBA and US Treasury are taking an inclusive approach to PPP applicants. Treasury’s FAQ issued 4/24 clarifies that employee-based size standards or revenue-based size standard corresponding to its primary industry are both appropriate to determine eligibility.

57) To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees? The appropriate method of employee headcount depends on the purpose of the calculation: the 500 employee threshold to determine borrower eligibility, or the full-time employee headcount for loan forgiveness purposes.

1. For purposes of loan eligibility:
   a. The CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.”
   b. A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold.
   c. Example: If a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

2. For purposes of loan forgiveness: The CARES Act uses the standard of “fulltime equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

58) Do Student Workers count when determining the number of employees for PPP loan eligibility? (new) Yes. Student workers generally count as employees unless the applicant is an institute of higher education and the student workers are part of a Federal Work-Study Program. Instead of a Federal Work-Study Program, the student workers can be part of a substantially similar program of a State or political subdivision thereof. These students must be excluded in determining the number of employees as well as excluded when determining payroll costs.

59) Can PPP loan recipients utilize exemptions based on the grounds provided in Federal nondiscrimination laws? (new) Yes.
The nondiscrimination provisions in the applicable SBA regulations can be utilized for sex-specific admissions practices at preschools, elementary and secondary schools, and private undergraduate higher education institutions. This provision also applies to emergency shelters and coreligionist housing under the Fair Housing Act. Additionally, religious nonprofits may make decisions with respect to the employment of individuals of a particular religion to perform work for the nonprofit.

**Affiliation**

60) 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.

61) Are affiliates considered together for purposes of determining eligibility?

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.

62) Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers?

No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers’ certifications.

63) Are borrowers required to apply SBA’s affiliation rules under 13 C.F.R. 121.301(f)?

Yes. Borrowers must apply the affiliation rules set forth in SBA’s [Interim Final Rule](https://www.sba.gov/sites/default/files/interim-final-rule.pdf). A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA’s alternative size standard, after applying the affiliation rules, if applicable.

SBA’s existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).
64) The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

65) 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. Confirm that 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.
3. If there is a common parent or other affiliate that is the employer for employees working in multiple companies, the legal entity making the payment should:
   a. Provide the payroll information, and
   b. 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.

66) How do the $10 million cap and affiliation rules work for franchises?

If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan.

- The franchisor does not apply on behalf of its franchisees.
- The $10 million cap on PPP loans is a limit per franchisee entity.
- Each franchisee is limited to one PPP loan.

67) Is a franchise brand that has been denied listing in the directory eligible for PPP loans?

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

68) How do the $10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?

Under the CARES Act, any single hospitality business entity is eligible to receive a PPP loan if:

1. Assigned a NAICS code beginning with 72 (including hotels and restaurants), and
2. Employs not more than 500 employees per physical location
   a. SBA’s affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72, and
   b. Employs not more than a total of 500 employees.

Each hotel or restaurant location owned by a parent business is a separate legal business entity and is permitted to apply for a separate PPP loan provided it:
   1. Uses its unique EIN to apply, and
   2. Each hotel or restaurant location that employs not more than 500 employees

The $10 million maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one loan.

The following examples illustrate how these principles apply.

**Example 1.** Company X directly owns multiple restaurants and has no affiliates.

<table>
<thead>
<tr>
<th>Company X may apply for a PPP loan if:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- It employs 500 or fewer employees per location, including at its headquarters.</td>
</tr>
<tr>
<td>- The total number of employees employed across all locations is over 500.</td>
</tr>
</tbody>
</table>

**Example 2.** Company X wholly owns Company Y and Company Z.

Companies X, Y, and Z are all affiliates of one another. Company Y and Company Z each own a single restaurant with 500 or fewer employees.

<table>
<thead>
<tr>
<th>Company Y and Company Z can each apply for a separate PPP loan.</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Each has 500 or fewer employees.</td>
</tr>
</tbody>
</table>

- The affiliation rules do not apply because Company Y and Company Z:
  - Each has 500 or fewer employees, and
  - Is in the food services business (with a NAICS code beginning with 72).

**Example 3.** Company X wholly owns Company Y and Company Z.

Companies X, Y, and Z are all affiliates of one another. Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.
Company Y is eligible for a PPP loan because it has 500 or fewer employees under the affiliation waiver.

Company Z is not eligible for an affiliation waiver and is determined to have more than 500 employee – it may however still be eligible for PPP under other eligibility categories and size standards. See ABA FAQ.

The affiliation rules do not apply to Company Y because:
- It has 500 or fewer employees, and
- Is in the food services business (with a NAICS code beginning with 72).

The affiliation rules do apply to Company Z.
- The waiver of the affiliation rules does not apply to Company Z because Company Z is in the construction industry.
- Under SBA’s affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies.
- The size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates.
- However, Company Z may be eligible to receive a PPP loan as a small business concern if it, together with Companies X and Y, meets SBA’s other applicable size standards. See ABA FAQ.

69) Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?

No.

For purposes of the PPP, a business’s participation in an ESOP (as defined in 15 U.S.C. § 632(q)(6)) does not result in an affiliation between the business and the ESOP. SBA and US Treasury determined that this is appropriate given the nature of such plans.

Under an ESOP, a business concern contributes its stock (or money to buy its stock or to pay off a loan that was used to buy stock) to the plan for the benefit of the company’s employees. The plan maintains an account for each employee participating in the plan. Shares of stock vest over time before an employee is entitled to them. However, with an ESOP, an employee generally does not buy or hold the stock directly while still employed with the company. Instead, the employee generally receives the shares in his or her personal account only upon the cessation of employment with the company, including retirement, disability, death, or termination.
Nonprofits

70) 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 organizations:
   a. As described in section 501(c)(3) of the Internal Revenue Code (IRC).
   b. This type of organization includes:
      i. Charitable organizations,
      ii. Churches and religious organizations,
      iii. Private foundations, and
      iv. Other organizations described in the code.

2. Tax-exempt veterans organizations:
   a. As described in section 501(c)(19) of the IRC
   b. Defined as follows:
      i. At least 75 percent of its members must be past or present members of the United States Armed Forces
      ii. At least 97.5 percent of its members must be:
         1. Present or former members of the United States Armed Forces,
         2. Cadets, including only students in college or university ROTC programs or at Armed Services academies, or
         3. Spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to above.
      iii. It must be operated exclusively for one or more of the following purposes:
         1. Promoting the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community);
         2. Assisting disabled and needy war veterans and members of the United States Armed Forces, their dependents, and the widows and orphans of deceased veterans;
         3. Providing entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces
         4. Carrying on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors;
         5. Conducting programs for religious, charitable, scientific, literary or educational purposes;
         6. Sponsoring or participating in activities of a patriotic nature;
         7. Providing insurance benefits for members or their dependents, or;
         8. Providing social and recreational activities for members.
      iv. No part of its net earnings may inure to the benefit of any private shareholder or individual.”

3. Tribal business concerns: As described in section 31(b)(2)(C) of the Small Business Act:
   a. Owned in part by one or more Indian tribal governments, or
   b. 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.”
Frequently Asked Questions about the SBA’s Paycheck Protection Program

71) Are other nonprofits, such as 501(c)(7), eligible for PPP loans?

PPP eligibility is limited to nonprofit organizations:

1. Described in section 501(c)(3) of the Internal Revenue Code of 1986, and
2. Exempt from taxation under section 501(a) of the IRS Code.

Churches, Religious Nonprofits, and Faith-based Organizations

72) 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.

73) Are otherwise qualified faith-based organizations exempt from SBA’s affiliation rules?

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.

This exemption means that 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.

74) How does a faith-based organization claim the exemption to the SBA affiliation rule?

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.

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.

75) Is there template Addendum A to claim a faith-based exemption to the SBA affiliation rule?

Yes.

No specific process, format, or filing is necessary to claim the affiliation exemption for otherwise qualified faith-based organizations. The Interim Final Rule for Business Loan Program Temporary Changes provides a sample “Addendum A” that may be used as a template, as replicated in the box below.

<table>
<thead>
<tr>
<th>INSTRUCTIONS FOR ADDENDUM A:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Within the application, include the addendum language on a separate sheet of paper.</td>
</tr>
<tr>
<td>2) Identify the sheet of paper as “Addendum A.”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SAMPLE ADDENDUM A LANGUAGE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.”</td>
</tr>
</tbody>
</table>

Banks, Lenders, and Financial Companies

76) 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.

**Bank Directors and Shareholders**

77) Are eligible businesses owned by directors or shareholders of a PPP Lender Bank permitted to apply for a PPP Loan through the bank with which they are associated?

Yes.

SBA and US Treasury determined that SBA regulations (including [13 CRF 120.110](#) and [120.140](#)) shall not apply to prohibit an otherwise eligible business owned by the director or equity holder of a PPP Lender from obtaining a PPP loan from the PPP Lender on whose board the director serves, or in which the equity owner holds an interest.

The SBA recognizes that:

- There is no meaningful risk of underwriting bias or below-market rates and terms. Unlike other SBA loan programs:
- Financial terms for PPP Loans are uniform for all borrowers, and
- Standard underwriting processes do not apply because no creditworthiness assessment is required for PPP Loans.
- Many directors and equity holders of PPP Lenders are owners of businesses unrelated to the PPP Lender.

In order to qualify for this exception, the business must:

1. Be otherwise eligible under PPP rules,
2. Be owned (in whole or part) by:
3. An outside director of a PPP lender, or
4. Holder of a less than 30 percent equity interest in a PPP Lender, and
5. Follow the same process as any similarly situated customer or account holder of the PPP Lender.

78) Can I ‘fast track’ PPP loan approvals for my bank directors and shareholders?

Banks should not show favoritism in processing time or prioritization of the director’s or equity holder’s PPP application. This behavior is prohibited under SBA’s PPP rules. The Federal Reserve Board will administer it’s interim final rule accordingly.

79) How does Regulation O (prohibition on loans to insiders) intersect with the extension of PPP loans to bank directors and shareholders?

PPP Lenders should comply with all other applicable state and federal regulations concerning loans to associates of the bank. PPP Lenders should also consult their own internal policies concerning lending to individuals or entities associated with the bank.
80) Under what circumstances does Federal Reserve Regulation O (prohibition on loans to insiders) apply to the PPP loans to a bank insider or their related interest? (new)

On April 17, 2020, the Federal Reserve Board adopted an interim final rule to except some PPP loans from certain requirements of Regulation O (12 CFR part 215). The exception applies to PPP loans that are not prohibited by the insider lending restrictions established by the SBA. The SBA issued an interim final rule that clarifies the application of its insider lending restrictions to PPP loans.

If a PPP loan would be prohibited by the insider lending restrictions established by the SBA, then Regulation O continues to apply to the loan.

In general, PPP loans are not prohibited by the SBA insider lending restrictions and are not subject to Regulation O if they are made by a PPP lender to a business owned by:

1. A PPP lender’s director,
2. A person that holds less than 30 percent of the stock or debt instruments of the PPP lender, or
3. Insiders of a PPP lender’s affiliates.

The Board provided the temporary exclusion in the interim final rule to allow banking organizations to make PPP loans to a broad range of small businesses within their communities, consistent with applicable law and safe and sound banking practices.

81) Does the Federal Reserve’s interim final rule change Regulation O restrictions on loans to bank executive officers and related interests? (new)

The interim final rule does not change the Regulation O restrictions on loans to bank executive officers and their related interests.

82) When does the Federal Reserve Board exception to Regulation O for PPP loans expire? (new)

Only PPP loans made between February 15, 2020, and June 30, 2020, qualify for the Federal Reserve Board’s Regulation O exception.

83) Does the Federal Reserve’s temporary exemption from Regulation O for PPP loans that meet SBA’s insider lending restrictions include exemption from Regulation O’s monthly and annual reporting requirements? (new)

The Federal Reserve has not published detailed interpretations of its interim final rule, but it excludes PPP loans—other than to bank executive officers and their related interests—from the definition of “extension of credit” in 12 CFR §215.3(b).

The record-keeping requirements under Regulation O, 12 CFR §215.8(a), require the bank to maintain records “necessary for compliance with the requirements of [Regulation O].” Reading this in conjunction with the interim final rule, it seems prudent for banks to document the PPP loans to insiders that are excluded from Regulation O meet the requirements for the exemption under the interim final rule.
**Agriculture and Farm-Related Business**

84) **Is agriculture eligible to receive PPP loans?**

Yes.

Agricultural producers, farmers, ranchers and agricultural cooperatives are eligible for PPP loans according to the [Paycheck Protection Program Loans Frequently Asked Questions](https://www.sba.gov/hubzone/offices-programs/loans-and-grants/paycheck-protection-program-loans-frequently-asked-questions) from April 24, 2020.

Agricultural entities will be eligible for PPP loans if:

“(i) the business has 500 or fewer employees, or (ii) the business fits within the revenue-based sized standard, which is average annual receipts of $1 million.

Additionally, agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets SBA’s “alternative size standard.” The “alternative size standard” is currently: (1) maximum net worth of the business is not more than $15 million, and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million”


85) **Is agriculture eligible to receive Economic Injury Disaster Loan (EIDL) funds?**

Yes.

Agricultural producers, farmers and ranchers are eligible for EIDL by the passage of [H.R. 266](https://www.congress.gov/bill/116th-congress/house-bill/266) under Division A, Sec. 101, part C.

86) **Are H-2A and H-2B workers counted as employees for PPP eligibility and calculation of payroll costs?**

No.


87) **What documentation is needed for sole proprietor farms?**

Sole proprietor farmers need to provide accurate documentation. This may include:

1. Payroll processor records,
2. Payroll tax filings, or Form 1099-MISC, or
3. Income and expenses from a sole proprietorship, or
4. 2019 Form 1040 Schedule C,
5. 2019 Form 1040 Schedule F.
88) Is there other documentation that can be used if a sole proprietor farm does not have this documentation?
If they cannot provide such documentation, the borrower must provide other supporting documentation sufficient to demonstrate the qualifying payroll amount. More information can be found here.

Cannabis Related Businesses

89) Are cannabis businesses ineligible for PPP loans?
Applicants engaged in illegal activity under federal, state or local law are ineligible for SBA programs, including PPP. Businesses that derive revenue from marijuana-related activities, or that support the end-use of marijuana, may be ineligible for SBA financial assistance because federal law prohibits the distribution and sale of marijuana.

In 2018, SBA updated its standard operating procedures, Lender and Development Company Loan Programs (SOP 50 10 K) to clarify the lending policy for marijuana and hemp businesses and determined that eligibility is determined by the nature of the business’s specific operations.

Marijuana businesses are eligible for PPP loans if the grow, produce, process, distribute or sell products made from hemp (as defined in section 297A of the Agricultural Marketing Act of 1946).

Marijuana businesses are ineligible for PPP loans if they engage in:

1. Direct Marijuana Business
   a. Growing, producing, processing, distributing, or selling marijuana or marijuana products, edibles, or derivatives.
   b. This applies to recreational use and medical use even if the business is legal under local or state law where the applicant business is located.

2. Indirect Marijuana Business
   a. Derives any of its gross revenue for the previous year (or, if a start-up, projects to derive any of its gross revenue for the next year) from sales to Direct Marijuana Businesses of products or services that could reasonably be determined to aid in the use, growth, enhancement or other development of marijuana.
   b. Examples:
      i. Testing services,
      ii. Selling or installing grow lights, hydroponic or other specialized equipment,
      iii. Advising or counseling Direct Marijuana Businesses on the specific legal, financial/accounting, policy, regulatory or other issues associated with establishing, promoting, or operating a Direct Marijuana Business.
      iv. Selling smoking devices, pipes, bongs, inhalants, or other products if the products are primarily intended or designed for marijuana use or if the business markets the products for such use.
c. Exception: SBA does not consider a plumber who fixes a sink for a Direct Marijuana Business or a tech support company that repairs a laptop for such a business to be aiding in the use, growth, enhancement or other development of marijuana.

Legal Gambling and Gaming Businesses

90) Are businesses that receive revenue from legal gaming eligible for a PPP Loan?

Yes.

- A business that is otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans.

- Businesses that received illegal gaming revenue are categorically ineligible.

US-Based, Foreign Owned Companies

91) Are foreign-owned, US-based companies, or a companies owned by a non-US citizens, with US employees and US operations eligible for PPP loans?

A foreign owned company is not an immediate basis to declare a company ineligible for a PPP loan, but SBA eligibility requirements require further analysis of the business structure and residency requirements.

A PPP eligible borrower may be a company with:

1. 500 or fewer employees whose principal place of residence is in the United States, and
   a. Employees for whom the company paid salaries and payroll taxes, or
   b. Paid independent contractors, as reported on a Form 1099-MISC


If applying as self-employed or a sole proprietor, then the principal place of residence of the individual must be in the United States.

The SBA Standard Operating Procedures (SOP) 50 10 5K further defines the requirements for eligibility when a company is foreign owned or owned by a person who is not a US citizen – See page 97 and 117 in the SBA SOP for the eligibility analysis for a foreign owned company.

Partnerships, Limited Liability Companies (LLCs), Sole Proprietors, Independent Contractors, and Self-Employed

92) 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.
3. Their principal place of residence is in the United States; and
4. They filed or will file a Form 1040 Schedule C for 2019.

93) 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.

94) What alternative documentation is acceptable for individuals that do not have the formal documents and records listed in FAQ 93?

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

95) What documentation is needed for a self-employed applicant who was not in operation in 2019 and will not file a 2019 Schedule C?

SBA will issue additional guidance for those individuals with self-employment income who:
1. Were not in operation in 2019 but who were in operation on February 15, 2020, and
2. Will file a Form 1040 Schedule C for 2020.

96) Will receipt of PPP funds interfere with an individual applicant’s eligibility for unemployment assistance?

Participation in the PPP may affect eligibility for state administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act Employee Retention Credits.

97) Are partnerships eligible for PPP loans?

Yes.
Partnerships are eligible for PPP loans under the CARES Act.

98) Are partnerships and LLCs limited to one PPP loan?

Yes.
- SBA and the US Treasury determined that limiting a partnership and its partners, including an LLC filing taxes as a partnership, to one PPP loan is necessary to help ensure that as many eligible borrowers as possible obtain PPP loans before the statutory deadline of June 30, 2020.
- This limitation will allow lenders to more quickly process applications and lower the burdens of applying for partnerships/partners.
Frequently Asked Questions about the SBA’s Paycheck Protection Program

99) Can a partner in a partnership apply for a PPP as self-employed?

No.

Partners in a partnership may not submit a separate PPP loan application for themselves as a self-employed individual.

100) Why aren’t partners allowed to apply as self-employed?

SBA determined that permitting partners to apply as self-employed individuals would create unnecessary confusion regarding which entity—the partner or the partnership—applies for partner and LLC member income. This would cause difficulty in the coordination of use of loan proceeds, and allocation issues.

Rent, mortgage interest, utilities, and other debt service are generally incurred at the partnership level, not partner level, so it is most natural to provide the funds for these expenses to the partnership, not individual partners.

Seasonal Business

101) My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business’s operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?

In evaluating a borrower’s eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020, or for an 8-week period between February 15, 2019 and June 30, 2019.

Hedge Funds and Private Equity Firms

102) Is a hedge fund or private equity firm eligible for a PPP loan?

No.

Hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan.

SBA and US Treasury do not believe that Congress intended for these types of businesses, which are generally ineligible for section 7(a) loans under existing SBA regulations, to obtain PPP financing.

103) Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan?

Borrowers must apply the affiliation rules that appear in 13 CFR 121.301(f), as set forth in the Second PPP Interim Final Rule (85 FR 20817).

The affiliation rules apply to private equity-owned businesses in the same manner as any other business subject to outside ownership or control. However, in addition to applying any applicable affiliation rules, all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
**Hospitals**

104) Is a hospital owned by governmental entities eligible for a PPP loan?
A hospital that is otherwise eligible to receive a PPP loan as a business concern or nonprofit organization (described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code) shall not be rendered ineligible for a PPP loan due to ownership by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.

SBA and US Treasury determined that this exception to the general ineligibility of government-owned entities, 13 CFR 120.110(j), is appropriate to effectuate the purposes of the CARES Act.

105) Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as “nonprofit organizations” under section 1102 of the CARES Act? (new)

Section 1102 of the CARES Act defines the term “nonprofit organization” as “an organization that is described in section 501(c)(3) of the IRS Code of 1986 and that is exempt from taxation under section 501(a) of [the IRS] Code.” Nonprofit hospitals exempt from taxation under section 115 of the IRS Code are unique in that many such hospitals may meet the description set forth in section 501(c)(3) of the IRS Code to qualify for tax exemption under section 501(a), but have not sought to be recognized by the IRS as such because they are otherwise fully tax-exempt under a different provision of the IRS Code.

SBA will treat a nonprofit hospital exempt from taxation under section 115 of the IRS Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act if:

1. The hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in section 501(c)(3) of the IRS Code, and
2. It is therefore within a category of organization that is exempt from taxation under section 501(a).

Note: The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination.

Nonprofit hospitals should also review all other applicable eligibility criteria, including the Interim Final Rules on Promissory Notes, Authorizations, Affiliation, and Eligibility (April 24, 2020) regarding an important limitation on ownership by state or local governments (See ABA FAQ)

**E-SIGNATURE, DOCUMENTATION AND BORROWER CERTIFICATION**

106) 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.

107) May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?
Yes.
Frequently Asked Questions about the SBA’s Paycheck Protection Program

As the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business.

An individual’s signature as an “Authorized Representative of Applicant” is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant’s equity, contained in the Borrower Application Form.

Lenders may rely on that representation and accept a single individual’s signature on that basis.

108) Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?

Yes.

If electronic signatures are not feasible, when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure the proper party has executed the document. All PPP lenders may accept:

1. Scanned copies of signed loan applications and documents containing the information and certifications required by SBA Form 2483 and the promissory note used for the PPP loan.
2. Any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

This guidance does not supersede signature requirements imposed by other applicable law, including by the lender’s primary federal regulator.

109) The SBA FAQ allowing scanned copies of signed PPP loan applications and promissory notes requires the bank “to take appropriate steps to ensure the proper party has executed the document.” The easy solution is to ask for a copy of the signer’s photo identification or driver’s license.

In March 2020, in support of Coronavirus social distancing rules, SBA released Procedural Notice 5000-20009, Guidance on Acceptable Signatures for Applications and Loan Documents in the 7(a) and 504 Business Loan Programs. That document says that the lender can accept a fax signature provided it receives a copy of the person’s driver’s license to verify the person’s identity. A PPP lender may comply with documentation required until the March 2020 SBA notice or an alternate confirmation method under the April 2020 PPP-specific FAQ instructions.

There are several important considerations when using a driver’s license to verify a customer’s identity. Briefly, a bank can retain identifying information from the license such as the state of issuance, the driver’s license number, and expiration date to verify a copy of the actual license was submitted by the borrower but it cannot retain a copy of the license.

Section 213 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (S.2155), which was adopted in May 2018, allows banks to copy a customer’s driver’s license to open an account online. The provision was included in the statute to allow banks in the handful of states that prohibited the copying of a driver’s license to let customers send a copy of their driver’s license using their cellphone or
PC to verify their identity and open an account online. The wrinkle to the statute is that the bank must delete the copy of the license as soon as it has used it to verify the person’s identity.

The bank can retain information from the license and, in fact, would have to in order to verify compliance with the Patriot Act and the SBA requirements. In fact, the bank could keep a copy of the person’s picture from the driver’s license for its identification of customers, but the bank must delete the copy or image of the actual driver’s license.

A second question often comes up when using a driver’s license to verify identity. The driver’s license picture will provide information about the race, gender, and possibly national origin of the borrower. Those are all factors that have possible fair lending implications. Based on guidance issued by the banking agencies under the USA PATRIOT Act Customer Identification Procedures – issued to implement section 326 of that law - we believe that a bank may use a copy of a driver’s license without raising fair lending concerns, so long as the bank does not improperly use the information on the license in a credit transaction.

110) Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Form, in order to complete implementation of their online portals?

Yes.
Lenders may use their own online systems and a form they develop that asks for the same information and using the same language as the Borrower Application Form. Lenders are still required to send the data to SBA using SBA’s interface.

111) 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
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.

112) 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.

113) 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.

114) 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?
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.

1. 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.
2. The Interim Final Rule allows Lenders to rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

Example
- Lender’s minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable.
- 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.
Certifications by Seasonal Employer

115) Can a seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form? (new)

Yes.

The Borrower Application Form requires applicants to certify that “The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program.”

On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP.

An applicant will be deemed eligible for a PPP loan under SBA rules if compliant with:

1. Applicable SBA requirements, and
2. Treasury’s interim final rule on seasonal workers.

116) Do seasonal employers skip the monthly payroll instruction on page 3 of the PPP Borrower Application? (new)

Instead of following the instructions on page 3 of the Borrower Application Form for the time period for calculating average monthly payroll for seasonal businesses, a seasonable employer applicant may elect to use the time period in Treasury’s interim final rule on seasonal workers.

Borrower Certification of Economic Need

117) Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application.

Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary.

Lenders may rely on a borrower’s certification regarding the necessity of the loan request.

Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

Specifically, before submitting a PPP application:

- All borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
Frequently Asked Questions about the SBA’s Paycheck Protection Program

- Borrowers must make this certification in good faith, taking 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.
- 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, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

118) Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

See response to ABA FAQ addressing need and eligibility of businesses owned by large companies with adequate sources of liquidity, or publicly traded companies with access to capital markets.

119) I heard a rumor that borrowers with more than $2M in PPP loans will be audited by SBA, but I don’t see it in the rules or guidance. Is this true?

On Tuesday, April 29, US Treasury Secretary Mnuchin and SBA Administrator Carranza issued a joint statement on the review procedure for PPP loans.

“We have noted the large number of companies that have appropriately reevaluated their need for PPP loans and promptly repaid loan funds in response to SBA guidance reminding all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of $2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application. Regulatory guidance implementing this procedure will be forthcoming.

120) Will SBA review individual PPP loan files to review borrower need?

Yes.

All borrowers are required to make an important certification to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, SBA and US Treasury decided to review all loans in excess of $2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application.

Additional guidance implementing this procedure will be forthcoming.

121) Will the outcome of SBA’s loan review affect the SBA loan guarantee?

No.

The outcome of SBA’s review of loan files will not affect SBA’s guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the first PPP interim final rule or SBA FAQ #1.
122) Is there a safe harbor for lenders who rely on borrower certifications and attestations of need?
Yes.

There is a limited safe harbor with respect to certification concerning need for PPP loan request.

Consistent with section 1102 of the CARES Act, the Borrower Application Form requires PPP applicants to certify that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Any borrower that applied for a PPP loan prior to the issuance of this regulation and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

SBA and US Treasury determined that this safe harbor is necessary and appropriate to ensure that borrowers promptly repay PPP loan funds that the borrower obtained based on a misunderstanding or misapplication of the required certification standard.

UNDERWRITING PPP LOANS
123) 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.

124) What are a bank’s underwriting obligations?
1. Each lender’s PPP underwriting obligation is limited to the items in ABA FAQ 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.

125) I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?
No.
Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers previously submitted loan applications that have not yet been processed may be revised based on clarifications reflected in Treasury’s April 6, 2020 FAQs.
BANK SECRECY ACT (BSA) COMPLIANCE

126) What are the BSA expectations for insured depository institutions?
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 released a notice in response to the CoVID-19 pandemic offering additional guidance for banks dealing with changed circumstances under the national emergency, particularly how to manage compliance with the BSA expectations under the CARES Act.

- FinCEN emphasizes the importance of BSA compliance to protect national security.
- FinCEN stresses the need to continue to apply a risk-based approach to BSA.
- FinCEN acknowledges the steps banks have been taking to protect employees and customers through social distancing.
- FinCEN will continue to evaluate the situation along with the prudential regulators.

To ensure the success of the program, FinCEN plans to offer additional guidance as appropriate.

127) Do PPP loans require BSA reverification for existing customers?
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 otherwise indicated by the institution’s risk-based approach to BSA compliance.” 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.

128) How should new FinCEN Contacts be handled?
To help banks comply with the changed circumstances, FinCEN has created a new contact mechanism. Banks that need assistance should:
1. Go to the FinCEN website, fincen.gov,
2. Scroll down to the center of the bottom of the first page,
3. Click on the tab labelled Need Assistance, and
4. Select “COVID-19” from the dropdown menu under “Subject” towards the bottom of the form that pops up just above the message section.

FinCEN will respond to the extent possible, and reminds bankers to keep their prudential supervisor and FinCEN informed of any changed circumstances.

129) Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?
If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.
Furthermore, if federally insured depository institutions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender’s risk-based approach to BSA compliance.

130) Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender’s obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?

For lenders with existing customers:
With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is as of April 13, 2020 being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information.

If federally insured depository institutions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender’s risk-based approach to BSA compliance.

For lenders with new customers:
For new customers, the lender’s collection of the following information from every natural person with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information:

1. Owner name,
2. Title,
3. Ownership percentage,
4. TIN,
5. Address, and
6. Date of birth.

If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity.

Questions about requirements related to beneficial ownership, may be addressed at: https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule.

Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender’s risk-based approach to BSA compliance.
How are the loan amounts, terms, and conditions determined?

131) 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.
   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.

132) 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:

<table>
<thead>
<tr>
<th>Fee</th>
<th>Loan Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>Loans of not more than $350,000;</td>
</tr>
<tr>
<td>3%</td>
<td>Loans of more than $350,000 and less than $2,000,000;</td>
</tr>
<tr>
<td>1%</td>
<td>Loans of at least $2,000,000.</td>
</tr>
</tbody>
</table>

133) 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.

134) How should banks recognize loan origination fees as income for call report purposes?
Net loan fees are normally recognized into income to result in a level yield over the expected life of the loan. Unless FASB or the banking agencies release special instructions for PPP fee income, banks are planning to use various methods on recognizing the loan fee.

With that in mind, given that the vast majority of the loan is expected to be forgiven after two months, the vast majority of the fee also should be recognized quickly, no matter how a bank is formally doing the accounting. In most cases, the timing of the recognition of the majority of the fee is within about three months.

REFINANCING AN SBA ECONOMIC INJURY DISASTER LOAN (EIDL)

135) Can a borrower refinance an existing SBA EIDL loan into a PPP Loan?
Yes.
Frequently Asked Questions about the SBA’s Paycheck Protection Program

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.

136) 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.

137) 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.

138) 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

139) What qualifies as “payroll costs” for a small business?
Payroll costs consist of:

1. Compensation to Employees with principal residence in 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.

140) 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:
Frequently Asked Questions about the SBA’s Paycheck Protection Program

4. 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

141) 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.

142) Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower’s payroll costs? No.
Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business’s payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

143) The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value? No.
The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:
   • Employer contributions to defined-benefit or defined-contribution retirement plans;
   • Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
   • Payment of state and local taxes assessed on compensation of employees.

144) Do PPP loans cover paid sick leave? Yes.
PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes 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).

Learn more about the Paid Sick Leave Refundable Credit [here](#).
145) If an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes, how do they report payroll costs and taxes?

SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider.

In these cases:
1. Payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower’s employees will be considered acceptable PPP loan payroll documentation.
2. Relevant information from an IRS Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO’s or other payroll provider’s Form 941, Employer’s Quarterly Federal Tax Return, should be used, if it is available;
3. Otherwise, the eligible borrower should:
   a. Obtain a statement from the payroll provider documenting the amount of wages and payroll taxes.
   b. Employees of the eligible borrower will not be considered employees of the eligible borrower’s payroll provider or PEO.

146) What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

Payroll Costs:
1. **Borrowers can calculate their aggregate payroll costs** using data either from the previous 12 months or from calendar year 2019.
2. **For seasonal businesses:** The applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.
3. **Applicants that not in business from February 15, 2019 to June 30, 2019:** Use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Number of Employees:
1. **Borrowers may use their average employment over the same time periods** to determine their number of employees, for the purposes of applying an employee-based size standard, or
2. **Alternatively, borrowers may elect to use SBA’s usual calculation:**
   a. The average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application, or
   b. If the business has not been operational for 12 months, the average number of employees for each of the pay periods that the business has been operational.
147) How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Under the CARES Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee’s and employer’s share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer’s share of payroll tax.

Example:

- An employee who earned $4,000 per month in gross wages, from which $500 in federal taxes was withheld, would count as $4,000 in payroll costs.
- The employee would receive $3,500, and $500 would be paid to the federal government.
- However, the employer-side federal payroll taxes imposed on the $4,000 in wages are excluded from payroll costs under the statute.


As described above, the SBA interprets this statutory exclusion to mean that:

1. Payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages.
2. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay;
   a. Their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages.
   b. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed.
3. Because the reference period for determining a borrower’s maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

148) 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.

The SBA guidance favors IRS form 941 to calculate payroll costs, maximum loan amount, and loan forgiveness. However, a borrower’s W-3 and the 940 series of forms also may offer details to support these calculations.
As the loan amount is determined based on monthly payroll amounts, the quarterly information on Form 941 is specifically requested to identify, calculate, and prorate the amount of qualified payments to employees.

See ABA FAQ.

Partnerships, Limited Liability Companies (LLCs), Sole Proprietors, Independent Contractors, and Self-Employed

149) 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.

CALCULATING THE LOAN AMOUNT

150) 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.

151) 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.

152) What alternative documentation can be provided for the purpose of substantiating the applied-for PPP loan amount?
- In place of IRS Form 941:
  - IRS Form W-2s and IRS Form W-3, or
  - Payroll processor reports, including quarterly and annual tax reports. Additionally, very small businesses can use their quarterly IRS Form 944.
- Employer retirement contributions may rely on records from a retirement administrator.
- Employer health insurance contributions may rely on documentation from a health insurance company or third-party administrator for a self-insured plan.

Small Business

153) What is the payroll-based calculation to determine loan amount for a small business?
1. **Step 1:** Aggregate payroll costs (for further details see ABA FAQs on calculating payroll costs) 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).

**Self-Employed WITHOUT Employees**

154) How do I calculate the maximum amount a self-employed individual without employees can borrow and what documentation is required?

Calculating the maximum loan amount depends upon whether the self-employed individual has other employees. (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the eight-week period following the first disbursement of the PPP loan.)

For a self-employed individual with no employees, the following methodology should be used to calculate their maximum loan amount:

1. **Step 1**: Find their 2019 IRS Form 1040 Schedule C line 31 net profit amount
   a. If they have not yet filed a 2019 return, they should fill it out and compute the value.
   b. If this amount is over $100,000, reduce it to $100,000.
   c. If this amount is zero or less, they are not eligible for a PPP loan.

2. **Step 2**: Calculate the average monthly net profit amount by dividing the amount from Step 1 by 12.

3. **Step 3**: Multiply the average monthly net profit amount from Step 2 by 2.5.

4. **Step 4**:
   a. Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that they seek to refinance,
   b. Subtract the amount of any advance under an EIDL COVID-19 loan because it does not have to be repaid.

5. **Documentation**: 2019 Form 1040 Schedule C
   a. Regardless of whether they have filed a 2019 tax return with the IRS, they must:
      i. Provide 2019 Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount, and
      ii. Establish they are self-employed by submitting a 2019 IRS Form 1099-MISC detailing:
         1. nonemployee compensation received (box 7),
         2. invoice,
3. bank statement, or

iii. Demonstrate they were in operation on or around February 15, 2020 by providing:
   1. 2020 invoice,
   2. bank statement, or

**Self-Employed WITH Employees**

155) How do I calculate the maximum amount a self-employed with employees can borrow and what documentation is required?

For a self-employed individual with employees, the following methodology should be used to calculate the maximum loan amount:

1. **Step 1:** Compute 2019 payroll by adding the following:
   a. **2019 Form 1040 Schedule C line 31 net profit amount up to $100,000 annualized**
      i. If the borrower has not yet filed a 2019 return, have them fill it out and compute the value).
      ii. If this amount is over $100,000, reduce it to $100,000,
      iii. If this amount is less than zero, set this amount at zero;
   b. **2019 gross wages and tips paid to their employees** whose principal place of residence is in the United States.
      i. Use 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter, plus
      ii. Any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips;
      iii. Subtract:
         1. Any amounts paid to any individual employee in excess of $100,000 annualized, and
         2. Any amounts paid to any employee whose principal place of residence is outside the United States; and
   c. **2019 employer health insurance contributions:** health insurance component of Form 1040 Schedule C line 14,
   d. **Retirement contributions:** Form 1040 Schedule C line 19, and
   e. **State and local taxes** assessed on employee compensation: primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms.

2. **Step 2:** Calculate the average monthly amount by dividing the amount from Step 1 by 12.

3. **Step 3:** Multiply the average monthly amount from Step 2 by 2.5.

4. **Step 4:**
   a. Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that they seek to refinance,
b. Subtract the amount of any advance under an EIDL COVID-19 loan because it does not have to be repaid.

5. **Documentation:** Borrowers must supply:
   a. 2019 Form 1040 Schedule C, Form 941, or other tax forms or equivalent payroll processor records containing similar information, and
   b. State quarterly wage unemployment insurance tax reporting forms from each quarter in 2019, or equivalent payroll processor records,
   c. Evidence of any retirement and health insurance contributions, if applicable.
   d. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish they were in operation on February 15, 2020.

156) I am a self-employed individual who reports my income on IRS Form 1040 Schedule F. What documentation must I provide in place of Schedule C and how should my maximum loan amount be determined (up to $10 million)?

Self-employed farmers (i.e., those who report their net farm profit on IRS Form 1040 Schedule 1 and Schedule F) should use IRS Form 1040 Schedule F in lieu of Schedule C, and Schedule F line 34 net farm profit should be used to determine their loan amount in place of Schedule C line 31 net profit. The calculation is otherwise the same as for Schedule C filers above. The 2019 IRS Form 1040 Schedule 1 and Schedule F must be included with the loan application.

**Nonprofit Organization – EXCLUDING Religious Institutions, Veterans Organizations, and Tribal Businesses**

157) How is the maximum PPP loan amount calculated for eligible nonprofit organizations (up to $10 million)?

Calculations for eligible nonprofit religious institutions, veterans organizations, and tribal business are addressed below.

**Note:** Eligible nonprofits that do not file an IRS Form 990, typically those with gross receipts less than $50,000, should follow the calculation instructions for religious organizations in [ABA FAQ](#) below.

**Note:** PPP loan forgiveness amounts will depend, in part, on the total amount spent during the eight-week period following the first disbursement of the PPP loan.

The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit organizations:

1. **Step 1.** Compute 2019 payroll costs by adding:
   a. 2019 gross wages and tips paid to employees whose principal place of residence is in the United States
   i. Computed using:
      1. 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter,
      2. Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
   ii. Subtracting any amounts paid to:
Frequently Asked Questions about the SBA’s Paycheck Protection Program

1. Any individual employee in excess of $100,000; and
2. Any employee whose principal place of residence is outside the U.S; or
   a. 2019 employer health insurance contributions (portion of IRS Form 990 Part IX line 9 attributable to health insurance);
   b. 2019 employer retirement contributions (IRS Form 990 Part IX line 8); and
   c. 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

2. Step 2. Calculate the average monthly payroll costs: divide the amount from Step 1 by 12.

3. Step 3. Multiply the average monthly payroll costs from Step 2 by 2.5.

4. Step 4. Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Documentation that must be provided:

- To substantiate the applied-for PPP loan amount:
  o 2019 IRS Form 941, and
  o State quarterly wage unemployment insurance tax reporting form from each quarter, or
    ▪ Equivalent payroll processor records, or
    ▪ IRS Wage and Tax Statements)
  o Filed IRS Form 990 Part IX, or
    ▪ Other documentation of any retirement and health insurance contributions.
    ▪ Eligible nonprofits that do not file an IRS Form 990, typically those with gross receipts less than $50,000, should follow the calculations instructions for nonprofit religious instructions (see ABA FAQ below).

- Evidence of February 15 operating date:
  o A payroll statement or similar documentation from the pay period that covered February 15, 2020 to establish that the borrower was in operation and had employees on February 15, 2020.

Nonprofit Organization – Religious Institutions, Veterans Organizations, and Tribal Businesses

158) How is the maximum PPP loan amount calculated for eligible nonprofit religious institutions, veterans organizations, and tribal businesses (up to $10 million)?

Note: PPP loan forgiveness amounts will depend, in part, on the total amount spent during the eight-week period following the first disbursement of the PPP loan.

The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit religious institutions, veterans organizations and tribal businesses:

1. Step 1. Compute 2019 payroll costs by adding:
a. 2019 gross wages and tips paid to employees whose principal place of residence is in the United States, which can be computed using:
   i. 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter,
   ii. Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
   iii. Subtracting any amounts paid to:
       1. any individual employee in excess of $100,000, and
       2. any amounts paid to any employee whose principal place of residence is outside the U.S;
   b. 2019 employer health insurance contributions;
   c. 2019 employer retirement contributions,
   d. 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

2. Step 2. Calculate the average monthly payroll costs: Divide the amount from Step 1 by 12.

3. Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

4. Step 4: Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Documentation that must be provided:
- To substantiate the applied-for PPP loan amount:
  o 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), and
  o Documentation of any retirement and health insurance contributions.
- To establish February 15 operation date: A payroll statement or similar documentation from the pay period that covered February 15, 2020 demonstrating that the borrower was in operation and had employees on that date.

**Limited Liability Corporation**

159) I am an LLC owner. Which set of maximum loan amount instructions apply to me?
LLCs should follow the instructions that apply to their tax filing situation, for example, whether they file as a sole proprietor, a partnership, or a corporation.

**Partnerships and S Corps**

160) How do partnerships apply for PPP loans and how is the maximum PPP loan amount calculated for partnerships (up to $10 million)? Should partners’ self-employment income be included on the business entity level PPP loan application or on separate PPP loan applications for each partner?
The self-employment income of general active partners may be reported as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.
The following methodology should be used to calculate the maximum amount that can be borrowed for partnerships (partners’ self-employment income should be included on the partnership’s PPP loan application, individual partners may not apply for separate PPP loans):

**Step 1:** Compute 2019 payroll costs by adding the following:

- 2019 Schedule K-1 (IRS Form 1065) Net earnings from self-employment of individual U.S. based general partners that are subject to self-employment tax, computed from box 14a (reduced by any section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties) multiplied by 0.9235, up to $100,000 per partner (if 2019 schedules have not been filed, fill them out);
- 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, if any, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of $100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
- 2019 employer contributions for employee health insurance, if any (portion of IRS Form 1065 line 19 attributable to health insurance);
- 2019 employer contributions to employee retirement plans, if any (IRS Form 1065 line 18); and
- 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms), if any.

**Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).

**Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.

**Step 4:** Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The partnership’s 2019 IRS Form 1065 (including K-1s) and other relevant supporting documentation if the partnership has employees, including the 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements) along with records of any retirement or health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. If the partnership has employees, a payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish the partnership was in operation and had employees on that date. If the partnership has no employees, an invoice, bank statement, or book of record establishing the partnership was in operation on February 15, 2020 must instead be provided.

161) How is the maximum PPP loan amount calculated for S corporations and C corporations (up to $10 million)?

The following methodology should be used to calculate the maximum amount that can be borrowed for corporations, including S and C corporations:

**Step 1:** Compute 2019 payroll costs by adding the following:

- 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting
any amounts paid to any individual employee in excess of $100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
- 2019 employer health insurance contributions (portion of IRS Form 1120 line 24 or IRS Form 1120-S line 18 attributable to health insurance);
- 2019 employer retirement contributions (IRS Form 1120 line 23 or IRS Form 1120-S line 17); and
- 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

**Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
**Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.
**Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The corporation’s 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed business tax return (IRS Form 1120 or IRS 1120-S) or other documentation of any retirement and health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

**Seasonal Employers**

162) How does this rule affect the calculation of the maximum loan amount for seasonal employers?

There are three possible methodologies for calculating the maximum loan amount for seasonal employers.

1. Under section 1102 of the CARES Act, a seasonal employer may determine its maximum loan amount for purposes of the PPP by reference to the employer’s average total monthly payments for payroll:
   a. “the 12-week period beginning February 15, 2019, or
   b. at the election of the eligible [borrower], March 1, 2019, and ending June 30, 2019.”
2. Alternatively, a seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019.

163) If a seasonal business was dormant or not fully operating as of February 15, 2020, is it still eligible?

Yes.

In evaluating eligibility, a seasonal business will be considered to have been in operation as of February 15, 2020, if the business was in operation for any 8-week period between May 1, 2019 and September 15, 2019.

164) Is this alternative calculation period limited to seasonal employers?

Yes.
SBA and US Treasury recognized that some seasonal employers have seasons that occur later in the year that would not be recognized under the earlier rule. Without the ability to use an alternative base period, many summer seasonal businesses would be unable to obtain funding on terms commensurate with those available to winter and spring seasonal businesses. This revision addresses that disparity and ensures by providing a seasonal employer the option of using any consecutive 12-week period between May 1, 2019 and September 15, 2019 for determining its maximum loan amount.

**INTEREST RATE ON PPP LOANS**

165) What is the interest rate on a PPP loan?  
The interest rate will be 100 basis points or 1%.

166) 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**

167) What is the maturity date on a PPP loan?  
The maturity is two years.

168) 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**

169) 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.

170) How long can PPP loan payments be deferred?  
PPP loan payment may only be deferred for 6 months.
171) 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

172) How can PPP loans be used by small businesses?

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);
4. Rent payments;
5. Utility payments;
6. Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or

173) What are acceptable utility payments? How is the word “utilities” defined?

The statutory language of the CARES Act defines a “covered utility payment” as:

1. A payment for a service for the distribution of:
   a. Electricity,
   b. Gas,
   c. Water,
   d. Transportation,
   e. Telephone, or
   f. Internet access
2. For which service began before February 15, 2020.

The utilities calculation for self-employed borrowers is limited to those utilities “claimed as a deduction on the 2019 Form 1040 Schedule C.” There is further information on the utility calculation for self-employed borrowers in ABA FAQ.

174) How can PPP loans be used by individuals with income from self-employment who file a 2019 Form 1040, Schedule C?

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

1. Owner compensation replacement, calculated based on 2019 net profit as described in the payroll calculation method.
2. Employee payroll costs (if you have employees)
a. As defined in the First PPP Interim Final Rule.
b. For employees whose principal place of residence is in the United States.

3. **Mortgage interest payments** (but not )
   a. On any business mortgage obligation
   b. Real or personal property. Examples:
      i. The interest on your mortgage for the warehouse you purchased to store business equipment, or
      ii. The interest on an auto loan for a vehicle you use to perform your business.
   c. BUT NOT mortgage prepayments or principal payments – these payments are expressly excluded.

4. **Business rent payments**. Examples:
   a. The warehouse where you store business equipment, or
   b. The vehicle you use to perform your business.

5. **Business utility payments**.
   a. For utilities to be included in this calculation as a permissible use of loan funds during the 8-week covered period,
      i. These expenses must have claimed or be entitled to have been claimed as a deduction on the 2019 Form 1040 Schedule C.
      ii. If the borrower did not claim or is not entitled to claim utilities expenses on their 2019 Form 1040 Schedule C, the borrower cannot use PPP loan proceeds for utilities during the covered period.
   b. Examples:
      i. Cost of electricity in the warehouse the borrower rents,
      ii. Gas the borrower uses driving their business vehicle.

6. **Interest payments on any other debt obligations** that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).

7. **Refinancing an SBA EIDL loan**.
   b. Maturity will be reset to PPP’s maturity of two years)
   c. SBA EIDL loan received from January 31, 2020 through April 3, 2020, does not affect eligibility for PPP loans – an EIDL borrower may apply for a PPP loan.
      i. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan.
      ii. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.
   d. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

175) Must a self-employed borrower use 2019 Form 1040 Schedule C to document expenses and use of funds? Can other IRS forms or documentation be used?
SBA and US Treasury determined that it is appropriate to limit self-employed individuals’—who file a Form 1040 Schedule C—use of loan proceeds to those types of allowable uses for which the borrower made expenditures in 2019.

- The SBA determined that this limitation on self-employed individuals who file a Form 1040 Schedule C is consistent with the borrower certification required by the CARES Act; specifically, that the PPP loan is necessary “to support the ongoing operations” of the borrower.
- SBA and US Treasury believe that this limitation is consistent with the structure of the CARES Act to maintain existing operations and payroll and not for business expansion.
- The limitation on the use of PPP loan proceeds will also help to ensure that the finite appropriations available for these loans are directed toward maintaining existing operations and payroll, as each loan that is made depletes the appropriation.

176) Can a self-employed borrower include expenses from 2020?
For individuals with income from self-employment from 2019 for which they have filed or will file a 2019 Form 1040 Schedule C, expenses incurred between January 1, 2020 and February 14, 2020 may not be considered because of the lack of verifiable documentation on expenses in this period.

177) What documentation is needed for self-employed individuals who were not in operation in 2019, but were in operation in February 2020, and will not file 2019 taxes?
SBA will issue additional guidance for those individuals with self-employment income who:

1. Were not in operation in 2019, but
2. Were in operation on February 15, 2020, and

178) Are there any other restrictions on how individuals with income from self-employment who file a 2019 Form 1040, Schedule C can use PPP loan proceeds?
Yes.
At least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs (but not for forgiveness purposes), the amount of any refinanced EIDL will be included. The rationale for this 75 percent floor is contained in the First PPP Interim Final Rule.

179) 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 CLOSE, DISBURSEMENT, REPORTING, AND LENDER FEES**

180) When must the loan be disbursed?  
The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

181) What happens if the 10th day is a non-business day?  
If the tenth calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day.

182) Can a borrower take multiple draws from a PPP loan and delay the start of the eight week covered period?  
No.  
The lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval.

183) When is loan approval? When the bank accepts the loan from the borrower?  
When SBA accepts the loan?  
The loan is considered approved when the loan is assigned a loan number by SBA.

184) What happens if I have a loan number, but have not fully disbursed the loan or opted to structure the disbursement over 60-days?  
For loans that received an SBA loan number prior to the posting of the April 28 interim final rule but have not yet been fully disbursed, the following transition rules apply:

1. The ten calendar-day period described above begins on April 28, 2020.  
2. The eight-week covered period began on the date of first disbursement.

185) What happens if a loan not disbursed within 10-day limit because the borrower has not completed their documentation, or not returned a signed promissory note, etc.?  
Lenders are not responsible for delays in disbursement attributable to a borrower’s failure to timely provide required loan documentation, including a signed promissory note. Loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender, subject to the transition rules above.

186) How do I disburse the portion of the PPP loan intended to refinance an EIDL?  
When disbursing PPP loans, lenders must send any amount of loan proceeds designated for the refinance of an EIDL loan directly to SBA and not to the borrower.

187) How will lenders report to SBA that a loan has been disbursed and receive the lender fee?  
Lenders will electronically submit an SBA Form 1502 to indicate that the PPP loan funds have been fully disbursed.
SBA will make available a specific SBA Form 1502 reporting process through which PPP lenders will report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled.

188) Where do I get an SBA form 1502?
SBA FORM 1502 IS NOT YET AVAILABLE. We will update this FAQ and alert ABA members when the form is released.

189) When must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?
- Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or,
- For loans approved before availability of the updated SBA Form 1502 reporting process, by May 18, 2020.

190) Are there instances where a lender will not receive a lender fee?
Yes.

A lender will not receive a processing fee:
1. Prior to full disbursement of the PPP loan;
2. If the PPP loan is cancelled before disbursement; or
3. If the PPP loan is cancelled; or
4. If the PPP loan is voluntarily terminated and repaid after disbursement. This includes a borrower repaying the PPP loan proceeds to conform to the borrower’s certification regarding the necessity of the PPP loan request.

191) What information does the lender need to provide to the SBA to receive the lender fee?
1. ACH credit information to direct payment of the requested processing fee.
2. Confirmation that all PPP loans for which the lender is requesting a processing fee have been fully disbursed on the disbursement dates and in the loan amounts reported.

192) How does a lender report a cancelled or voluntarily terminated PPP loan to SBA?
A lender must report through either Etran Servicing or the SBA Form 1502 report any PPP loans that have been cancelled before disbursement or that have been cancelled or voluntarily terminated and repaid after disbursement.

LOAN FORGIVENESS

193) 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.
194) 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.

195) 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

196) 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.

197) 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:

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

198) 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.

199) 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.

200) 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.

201) 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.

202) 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.

203) 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.

204) The amount of forgiveness of a PPP loan depends on the borrower’s payroll costs
over an eight-week period; when does that eight-week period begin?
The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the
borrower.
205) What amounts shall be eligible for forgiveness for self-employed applicants?
The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest.

The actual amount of loan forgiveness will depend, in part, on the total amount spent over the covered period on:

1. Payroll costs, including:
   a. Salary, wages, and tips,
      i. Up to $100,000 of annualized pay per employee
      ii. For eight weeks = a maximum of $15,385 per individual,
   b. Covered benefits for employees--but not owners--including:
      i. Health care expenses,
      ii. Retirement contributions, and
      iii. State taxes imposed on employee payroll paid by the employer, such as unemployment insurance premiums;

2. Owner compensation replacement, calculated based on:
   a. 2019 net profit,
   b. With forgiveness of such amounts limited to eight weeks’ worth (8/52) of 2019 net profit, but
   c. Excluding any qualified sick leave equivalent amount for which a credit is claimed under:
      i. Section 7002 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127), or
      ii. Qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;

3. Payments of interest on mortgage obligations
   a. Real or personal property
   b. Incurred before February 15, 2020, to
   c. To the extent they are deductible on Form 1040 Schedule C (business mortgage payments);

4. Rent payments on lease agreements:
   a. In force before February 15, 2020,
   b. To the extent they are deductible on Form 1040 Schedule C (business rent payments); and

5. Utility payments under service agreements
   a. Dated before February 15, 2020
   b. To the extent they are deductible on Form 1040 Schedule C (business utility payments).

206) Why is the PPP loan amount and forgiveness for self-employed people based on 2019 net profits?
SBA and US Treasury determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C to eight weeks’ worth (8/52) of 2019 net profit.

• This is most consistent with the structure of the CARES Act, its focus on keeping workers paid, and will prevent windfalls that Congress did not intend.
• Many self-employed individuals have few of the overhead expenses that qualify for forgiveness under the CARES Act.
• The limitation also ensures that the finite appropriations are directed toward payroll protection, consistent with the CARES Act’s central objective.
• 75% of the amount forgiven must be attributable to payroll costs for the reasons specified in the First PPP Interim Final Rule.

Example:

Many self-employed individuals operate out of either their homes, vehicles, or sheds and thus do not incur qualifying mortgage interest, rent, or utility payments.

• As a result, most of their receipts will constitute net income.
• Allowing such a self-employed individual to treat the full amount of a PPP loan as net income would result in a windfall.
• The entire amount of the PPP loan (a maximum of 2.5 times monthly payroll costs) would be forgiven even though Congress designed this program to limit forgiveness to certain eligible expenses incurred in an eight-week covered period.

207) What documentation is the borrower required to submit to the lender with the request for loan forgiveness?
1. Borrower certification required by Section 1106(e)(3) of the CARES Act, (See ABA FAQ)
2. Payroll: If the borrower has employees:
   a. Form 941, and
   b. State quarterly wage unemployment insurance tax reporting forms, or
   c. Equivalent payroll processor records that best correspond to the covered period,
   d. Provide evidence of any retirement and health insurance contributions.
3. Rent, Mortgage, Utilities: All borrowers seeking forgiveness must submit evidence of:
   a. Business rent,
   b. Business mortgage interest payments on real or personal property, or
   c. Business utility payments during the covered period if you used loan proceeds for those purposes.
4. Owner Compensation:
   a. 2019 Form 1040 Schedule C to determine net profits.
      i. As provided at the time of the PPP loan application.
      ii. Must be used to determine the amount of net profit allocated to the owner for the eight-week covered period.
   b. SBA and US Treasury determined that for purposes of loan forgiveness it is appropriate to require self-employed individuals to rely on the 2019 Form 1040 Schedule C to determine the amount of net profit allocated to the owner during the covered period.
208) Will a borrower’s PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA’s implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer? (new)

No.

SBA and Treasury intend to issue an interim final rule [NOT YET RELEASED] excluding laid-off employees whom the borrower offered to rehire for the same salary/wages and same number of hours from the CARES Act’s loan forgiveness reduction calculation.

The interim final rule will specify that, to qualify for this exception:

1. the borrower must have made:
   a. In writing,
   b. A good faith,
   c. Offer of rehire:
      i. For the same salary/wages, and
      ii. Same number of hours.

2. Employee’s rejection of that offer must be documented by the borrower.

209) Will a former employee’s rejection of an offer of re-employment effect their eligibility for unemployment compensation? (new)

Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

IRS Treatment of PPP Loan Forgiveness

210) Is PPP loan forgiveness taxable by IRS?

No.

By statute, the amount forgiven on PPP loans is not taxable.

From the CARES Act:

For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection 8(b) shall be excluded from gross income.

211) Is PPP loan forgiveness reportable by the bank on a 1099-C?

The IRS had not issued any guidance as to whether PPP loan forgiveness is reportable by the bank on a 1099-C, even if it is not taxable.

212) What’s the impact of IRS Notice 2020-32 on the tax treatment of PPP loan forgiveness? (new)

Notice 2020-32 was issued by IRS / Treasury on April 30, 2020 to eliminate the deductibility of expenses that qualify for PPP loan forgiveness under the CARES Act.
The impact of this notice appears significant:

- Diminishes the after-tax financial assistance of PPP borrowers who have all or portion of PPP loans forgiven,
- Modifies the financial guidance banks should provide borrowers who are assessing their total liquidity needs when applying PPP, and
- Changes the legislative net cost of the PPP program, apparently against the intent of lawmakers.

In sum, this notice could have a significant impact on the after-tax economic position of taxpayers who are PPP borrowers and have all or portion of qualified loans forgiven.

213) **How is there a tax impact if the CARES Act specifies that PPP forgiveness will not be subject to federal taxes?** *(new)*

Section 1102 of the CARES Act establishes the PPP, which facilitates loans to qualified businesses to fund wages and other authorized expenses. If a participant in the PPP meets certain requirements, part or all of a PPP loan may be forgiven.

Section 1106 of the CARES Act provides that any amount which would be otherwise be includible in taxable gross income of the eligible recipient by reason of forgiveness shall be excluded from taxable gross income.

Under [IRS Notice 2020-32](#):

1. No deduction is allowed under the Internal Revenue Code:
   a. For an expense that is otherwise deductible, and
   b. If the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act.
2. Income associated with the forgiveness is excluded from gross income for purposes of the Code pursuant to section 1106(i) of the CARES Act.

As a result, the forgiven amount becomes a nondeductible expense, which increases taxable income subject to federal and state tax and decreases total after tax income.

### Example

**Comparison of after tax income before/after release of IRS 2020-32 guidance on PPP forgiveness.**

*NOTE: Assumes 25% tax rate*

<table>
<thead>
<tr>
<th></th>
<th>Before Notice 2020-32</th>
<th>After Notice 2020-32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary After Tax Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before PPP Forgiveness Benefit</td>
<td>$11,250</td>
<td>$11,250</td>
</tr>
<tr>
<td>Qualified debt forgiveness (non-taxable):</td>
<td>$75,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>Tax effect of loss of deductibility of Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resulting in loan forgiveness ($75,000 x 25% tax rate)</td>
<td>N/A</td>
<td>($18,750)</td>
</tr>
</tbody>
</table>
### SECONDARY MARKET

**214)** 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.

**215)** Can a lender sell a PPP loan into the secondary market?  
Yes.  
- A PPP loan may be sold into the secondary market at any time after the loan is fully disbursed.  
- A secondary market sale of a PPP loan does not require SBA approval.  
- A PPP loan sold into the secondary market is 100% SBA guaranteed.  
- A PPP loan may be sold on the secondary market at a premium or a discount to par value.

### Loan Participations

**216)** Can a PPP lender sell participations in PPP loans?  
Yes.  
PPP lenders may sell participating interests in PPP loans to other PPP Lenders in accordance with 13 CFR § 120.432(b).

**217)** How do I know if a Lender is participating in the PPP program for purposes of buying a PPP loan participation?  
All participating interests in PPP loans must be sold to Lenders that have a signed SBA Form 750, SBA Form 3506, or SBA Form 3507.

**218)** What must an originating lender do before selling a participation?  
The originating lender must provide SBA’s Office of Credit Risk Management (OCRM) with prior written notice of any such participating interest sale at the following email address:  

PPPLoanParticipation@sba.gov

For purposes of PPP loans only, SBA’s prior written consent is not required and Lenders may sell participations of up to 100 percent of the principal balance of PPP loans.

**219)** Who holds the servicing rights on PPP loan participations?  
The originating lender must continue to hold the note, the loan documents and retain all servicing rights, and will be the party responsible to SBA with respect to all servicing actions, including requests for advance purchases and loan forgiveness.

**220)** What are the ongoing obligations of the originating lender after the loan is sold?  
The originating lender:
Frequently Asked Questions about the SBA’s Paycheck Protection Program

- Must continue to hold the note, the loan documents and retain all servicing rights.
- Will be the party responsible to SBA with respect to all servicing actions, including requests for advance purchases and loan forgiveness.
- Will be the party eligible for the guarantee purchase of a PPP loan.
- Must provide SBA’s Office of Credit Risk Management (OCRM) with prior written notice of any such participating interest sale at the following email address: PPPLoanParticipation@sba.gov
- For purposes of PPP loans only, the originating Lender will be considered to meet the good standing and satisfactory performance requirements of 13 CFR § 120.433.

221) Who do I contact if I have further questions about PPP participations and secondary market sales?
Contact John Wade, Chief of Secondary Markets at john.wade@sba.gov

Whole Loan Sales

222) Who can buy PPP whole loans? (new)
Lenders participating in PPP may sell all of their interest in PPP loans to other participating PPP Lenders in accordance with 13 CFR § 120.432(a).

All PPP loans must be sold to Lenders that have a signed a Loan Guarantee Agreement:

- SBA Form 750,
- SBA Form 3506, or
- SBA Form 3507.

223) Is SBA’s prior consent needed before whole loans can be sold? (new)
No.

For purposes of PPP loans only, SBA’s prior written consent is not required.

224) Who services the loan? (new)
The purchasing Lender must take possession of the note and the loan documents and service the loan.

225) May the originating lender retain subservicing rights? (new)
Yes.

The purchasing lender may elect to have the originating Lender subservice the loan and hold the note and loan documents on behalf of the purchasing Lender.

226) What are the obligations and liabilities of the purchasing lender of PPP whole loans? (new)

- The purchasing Lender will be the party responsible to SBA with respect to all servicing actions, including requests for advance purchases and loan forgiveness.
- The purchasing lender will be the party eligible for the guarantee purchase of a PPP loan.
- The purchasing Lender acquires the PPP loan subject to SBA’s existing rights, including its right to deny liability on its guarantee.
The PPP loan will be purchased subject to the acquiring Lender’s applicable Loan Guarantee Agreement.

For purposes of PPP loans only, the originating Lender will be considered to meet the good standing and satisfactory performance requirements of 13 CFR § 120.433.

227) How does the originating lender notify SBA of a sale of PPP whole loans? (new)
The originating Lender must immediately provide SBA’s Office of Credit Risk Management with notice of any PPP whole loan sale including:

1. The name of the purchasing Lender,
2. A loan list assembled in ascending order that includes:
   a. SBA loan number
   b. borrower name,
   c. original loan amount,
   d. current amount principal balance, and
   e. maturity date

The notice of loan sale and required documentation should be emailed to: PPPLoanSales@sba.gov

228) Who do I contact with questions about PPP whole loan sales? (new)
Please direct comments to SBA’s John Wade at john.wade@sba.gov

PAYMENT PROTECTION PROGRAM LENDING FACILITY (PPPLF)

229) What is the status of the Payment Protection Program Lending Facility (“PPPL Facility”) and how will it operate?
On April 7, 2020, The Federal Reserve Board authorized each of the Federal Reserve Banks to establish the PPPL Facility, pursuant to section 13(3) of the Federal Reserve Act. Under the PPPL Facility, the Federal Reserve Banks will lend to eligible borrowers on a non-recourse basis, taking PPP Loans as collateral. All depository institutions that originate PPP Loans may participate in the facility through their regional Reserve Bank.

230) Are there fees associated with the program?
There are no fees associated with the program.

231) What are the terms of the loan?
The principal amount of an extension of credit under the PPPL Facility will be equal to the principal amount of the PPP Loan pledged as collateral to secure the extension of credit. The maturity date of an extension of credit under the PPPL Facility will equal the maturity date of the PPP Loan pledged to secure the extension of credit. Extensions of credit under the PPPL Facility will be made at a rate of 35 basis points.

232) What happens if the borrower defaults, is forgiven, or sold?
The maturity date of the Facility’s extension of credit will be accelerated if the underlying PPP Loan goes into default and or the bank sells the PPP Loan to the SBA to realize on the SBA guarantee. The maturity
date of the PPPL Facility’s extension of credit also will be accelerated to the extent of any loan forgiveness reimbursement received by the eligible borrower from the SBA.

233) Because PPP covered loans that are pledged as collateral to the PPPL Facility remain on balance sheet, will banks need to hold capital against them?
No. On April 7 the banking agencies approved an interim final rule that would allow banking organizations to neutralize the regulatory capital effects of loans pledged to the PPPL Facility. This relief applies to both risk-based and leverage capital ratios, including the community bank leverage ratio.

234) When will the PPPL Facility end?
No new extensions of credit will be made under the PPPL Facility after September 30, 2020, unless the Board and the Department of the Treasury determine to extend the facility.

235) Where can I find the PPPL Facility FAQs and documents?
The Borrowing and Operational Documentation will be available here.
The PPPLF Term Sheet is available for download here.
The Federal Reserve PPPLF FAQs can be reviewed here.