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## **SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 113, 120 and 121**

**[Docket No. SBA-2021-0001]**

**RIN 3245-AH62**

## **DEPARTMENT OF THE TREASURY**

**RIN 1505-AC74**

### **Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act**

**AGENCY:** U. S. Small Business Administration; Department of the Treasury.

**ACTION:** Interim final rule

**SUMMARY:** On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 1102 of the CARES Act temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). Subsequently, SBA published twenty-three interim final rules providing additional guidance on the PPP (some of which were jointly issued with the Department of the Treasury) and Treasury published one interim final rule. On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) (Pub. L. 116-260) became law. The Economic Aid Act extends the authority to make PPP loans through March 31, 2021 and revises certain PPP requirements. This

interim final rule incorporates the Economic Aid Act amendments required to be implemented by regulation within 10 days of enactment. For ease of borrower and lender reference, this interim final rule also consolidates the interim final rules (and important guidance) issued to date governing borrower eligibility, lender eligibility, and PPP application and origination requirements for new PPP loans, as well as provides general rules relating to loan increases and loan forgiveness. This rule is not intended to substantively alter or affect PPP rules that were not amended by the Economic Aid Act. Additional rules related to second draw PPP loans will be published separately, and SBA intends to issue a consolidated rule governing all aspects of loan forgiveness and the loan review process as well. This interim final rule is intended to govern new PPP loans made under the Economic Aid Act, as well as applications for loan forgiveness on existing PPP loans where the loan forgiveness payment has not been remitted, and should not be construed to alter or affect the requirements applicable to PPP loans closed prior to its enactment, unless the provisions apply retroactively consistent with specific applicability provisions of the Economic Aid Act as identified in this rule. In addition, in this interim final rule, Treasury exercises its authority under section 1109 of the CARES Act to allow borrowers of first draw PPP loans to use 2019 or 2020 to calculate their maximum loan amount.

DATES: Effective Date: Unless otherwise specified in this interim final rule, the provisions of this interim final rule are effective [INSERT DATE OF FILING AT THE OFFICE OF THE FEDERAL REGISTER].

Applicability Date: This interim final rule applies to loan applications, including requests for increases, and applications for loan forgiveness submitted under the Paycheck Protection Program following enactment of the Economic Aid Act. This interim final rule also applies to

loan forgiveness applications submitted under the Paycheck Protection Program before enactment of the Economic Aid Act where SBA has not remitted the forgiveness payment.

Comment Date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by number SBA-2021-0001 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please send an email to [ppp-ifr@sba.gov](mailto:ppp-ifr@sba.gov). All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833-572-0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide continue to experience economic hardship as a direct result of the Federal, State, and local public health measures that continue to be taken to minimize the

public's exposure to the virus. In addition, based on the advice of public health officials, other voluntary measures continue to be observed, resulting in a decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

Section 1102 of the CARES Act temporarily permitted SBA to guarantee 100 percent of 7(a) loans under a new program titled the "Paycheck Protection Program," pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. A more detailed discussion of sections 1102 and 1106 of the Act is found in section III.

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116-142), which changed key provisions of the Paycheck Protection Program, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. Section 3(d) of the Flexibility Act provided that the amendments relating to PPP loan forgiveness and extension of the deferral period for PPP loans were effective as if included in the CARES Act, which meant that they

were retroactive to March 27, 2020. Section 2 of the Flexibility Act provided that the amendment relating to the extension of the maturity date for PPP loans became effective on the date of enactment (June 5, 2020). Under the Flexibility Act, the extension of the maturity date for PPP loans was applicable to PPP loans made on or after that date, and lenders and borrowers were able to mutually agree to modify PPP loans made before such date to reflect the longer maturity. On July 4, 2020, Public Law 116-147 extended the authority for SBA to guarantee PPP loans to August 8, 2020. On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) (Pub. L. 116-260) was enacted, which reauthorizes lending under the PPP through March 31, 2021, and among other things, modifies provisions related to making PPP loans and forgiveness of PPP loans, and authorizes second draw PPP loans under new section 7(a)(37) of the Small Business Act for PPP borrowers that previously received a PPP loan (rules for second draw loans will be published separately). The Economic Aid Act also redesignates section 1106 of the CARES Act as section 7A and transfers that section to the Small Business Act, to appear after section 7 of the Small Business Act.<sup>1</sup>

In addition to incorporating the changes to PPP requirements made by the Economic Aid Act, this interim final rule consolidates and restates the following interim final rules: 85 Fed. Reg. 20811 (posted on April 2, 2020 and published in the Federal Register on April 15, 2020); 85 Fed. Reg. 20817 (posted on April 3, 2020 and published on April 15, 2020); 85 Fed. Reg. 21747 (posted on April 14, 2020 and published on April 20, 2020); 85 Fed. Reg. 23450 (posted on April 24, 2020 and published on April 28, 2020); 85 Fed. Reg. 23917 (posted on April 27,

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<sup>1</sup> Because section 1106 of the CARES Act is now codified as section 7A of the Small Business Act, any reference to section 1106 of the CARES Act in the rules that are being restated herein will refer to section 7A.

2020 and published on April 30, 2020); 85 Fed. Reg. 26321 (posted on April 28, 2020 and published on May 4, 2020); 85 Fed. Reg. 26324 (posted on April 30, 2020 and published on May 4, 2020); 85 Fed. Reg. 27827 (posted on May 5, 2020 and published on May 8, 2020); 85 Fed. Reg. 29845 (posted on May 8, 2020 and published on May 19, 2020); 85 Fed. Reg. 29842 (posted on May 13, 2020 and published on May 19, 2020); 85 Fed. Reg. 29847 (posted on May 14, 2020 and published on May 19, 2020); 85 Fed. Reg. 30835 (posted on May 18, 2020 and published on May 21, 2020); 85 Fed. Reg. 31357 (posted on May 20, 2020 and published on May 26, 2020); 85 Fed. Reg. 35550 (posted on June 5, 2020 and published on June 11, 2020); 85 Fed. Reg. 36308 (posted on June 11, 2020 and published on June 16, 2020); 85 Fed. Reg. 36717 (posted on June 12, 2020 and published on June 18, 2020); 85 Fed. Reg. 36997 (posted on June 17, 2020 and published on June 19, 2020); 85 Fed. Reg. 38301 (posted on June 24, 2020 and published on June 26, 2020); and 85 Fed. Reg. 39066 (posted on June 25, 2020 and published on June 30, 2020). This rule should be interpreted consistently with the sets of Frequently Asked Questions (FAQs) regarding the PPP that are posted on SBA's and Treasury's websites and the interim final rules posted separately providing guidance on second draw PPP loans and the consolidated guidance on loan forgiveness and the loan review process; however, the Economic Aid Act overrides any conflicting guidance in the FAQs, and SBA will be revising the FAQs to fully conform to the Economic Aid Act as quickly as feasible.

Most of this document restates existing regulatory provisions to provide lenders and new PPP borrowers a single regulation to consult on borrower eligibility, lender eligibility, and loan application and origination requirements, as well as general rules on increases and loan forgiveness for PPP loans. To enhance the readability of this document, SBA has not reproduced the policy and legal justifications for existing regulatory provisions restated here, except to the

extent that those justifications may be helpful to the borrower or lender. However, those justifications from the original interim final rules are incorporated by reference here.

In addition, section 1109(b) of the CARES Act authorizes Treasury to establish criteria for certain other lenders to participate in the PPP. The SBA is required to administer the program that Treasury establishes under section 1109 of the Act, with guidance from Treasury. The CARES Act authorizes Treasury to issue regulations and guidance to implement section 1109, including regulations that establish “terms and conditions” for PPP loans. *See* section 1109(d)(2). The terms and conditions established by Treasury under section 1109 are not required to be identical to those provided elsewhere. Rather, the CARES Act allows Treasury to set terms and conditions pertaining to certain criteria—the maximum interest rate, maximum loan amount, and other specified terms—that are “consistent,” to “the maximum extent practicable,” with comparable terms in paragraph 36 of section 7(a) of the Small Business Act (15 U.S.C. 636(a)). *See* section 1109(d)(2).

In this rulemaking, Treasury is addressing the needs of new PPP borrowers by allowing all new borrowers to use 2019 or 2020 for purposes of calculating their maximum loan amount. Section 1102 of the CARES Act states that borrowers are to calculate their maximum loan amount by using “payroll costs incurred during the 1-year period before the date on which the loan is made....” For PPP loans made in 2020, most borrowers used 2019. The Economic Aid Act did not change this language for borrowers that are not farmers and ranchers and would require most new PPP borrowers who obtain a loan in 2021 to use 2020 as their base period. Using authority granted by section 1109 of the CARES Act, this rulemaking allows new borrowers to choose 2019 or 2020 as the base period, thereby ensuring that they are able to obtain funding on terms commensurate with existing PPP borrowers. Separately, section 313 of

the Economic Aid Act states that farmers and ranchers are to calculate their maximum loan amount using 2019 as their base period. This rulemaking allows farmers and ranchers to elect either 2019 or 2020 as their base period, in order to ensure that they can obtain funding on terms commensurate with those available to other new PPP borrowers.

As required by section 1109(d)(2)(B) of the CARES Act, Treasury has determined that providing new PPP borrowers with flexibility in choosing a base period is consistent, to the “maximum extent practicable,” with the terms applicable to existing PPP borrowers. This enhanced flexibility will help ensure that new PPP borrowers are treated even-handedly and do not see their permissible loan amounts reduced due to financial distress experienced in 2020. Other than these adjustments, the terms and requirements applicable to PPP loans under this rule are identical to the terms and requirements applicable to all other PPP loans. As a result, a PPP borrower that elects to use the flexibility in selecting a base period under this interim final rule may follow the same processes and procedures applicable to other PPP loans.

## II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the Economic Aid Act without regard to notice requirements. In addition, this rule is being issued to allow for immediate implementation of this program. The intent of both the CARES Act and the Economic Aid Act is that SBA provides relief to America’s small businesses expeditiously. Congress reauthorized PPP because of the current economic conditions affecting small businesses and intended for the loans to be made quickly. The last day to apply for and receive a PPP loan is March 31, 2021. Given the short duration of this program, and the urgent need to issue loans quickly, the Administrator in consultation with the Secretary has determined that it is



impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III. These comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The SBA will consider these comments and the need for making any revisions as a result of these comments.

### III. Paycheck Protection Program as Amended by Economic Aid Act

#### *Overview*

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the “Paycheck Protection Program.” Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The Economic Aid Act reauthorizes lending under the PPP through March 31, 2021, and revises certain PPP requirements. The following outlines the key provisions of the PPP related to eligibility of applicants for PPP loans, which lenders are authorized to make PPP loans, the process for making PPP loans, loan increases, and loan forgiveness, as revised by the Economic Aid Act. Additional rules related to second draw PPP loans will be published separately. While this interim final rule fully implements the Economic

Aid Act's changes to loan forgiveness, SBA also intends to issue a consolidated rule governing all aspects of loan forgiveness and loan review as well to provide a single reference point for lenders and borrowers.

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**A. General**

SBA is authorized to guarantee loans under the PPP through March 31, 2021. Congress has authorized a total program level of \$806,450,000,000 to provide guaranteed loans under this temporary 7(a) program under sections 7(a)(36) (PPP loans or First Draw PPP Loans) and 7(a)(37) (Second Draw PPP Loans) of the Small Business Act, a portion of which is available for new First Draw and Second Draw PPP Loans. Lenders have delegated authority to make PPP loans. SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria and will not be subject to any enforcement action or penalty relating to loan origination or forgiveness of the PPP loan if the lender acts in good faith relating to the origination or forgiveness of the PPP loan and satisfies all other applicable Federal, State, local, and other statutory or regulatory requirements (as provided in section 7A(h) of the Small Business Act, as amended). Remedies for violations of PPP requirements or fraud are

separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

***B. What Do Borrowers Need to Know and Do?***

*1. What businesses, organizations, and individuals are eligible?*

*a. Am I eligible?<sup>2,3</sup>*

You are eligible for a PPP loan if:

i. you, together with any affiliates (if applicable),<sup>4</sup> are:

- a small business concern under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 for your industry or under the SBA alternative size standard<sup>5</sup>;
- an independent contractor, eligible self-employed individual, or sole proprietor;
- a business concern, a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, and you

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<sup>2</sup> See interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans, which is being published separately.

<sup>3</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.a. (April 15, 2020), as amended by 85 Fed. Reg. 36308 (June 16, 2020), 85 Fed. Reg. 36717 (June 18, 2020), and 85 Fed. Reg. 38301 (June 26, 2020), and has been modified to reflect subsequent rules or guidance and the Economic Aid Act.

<sup>4</sup> See section 3 regarding the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

<sup>5</sup> Under SBA's alternative size standard, a business concern may qualify as a small business concern if it, together with any affiliates: (1) has a maximum tangible net worth of not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of application is not more than \$5 million.

employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201;

- a housing cooperative, an eligible section 501(c)(6) organization, or an eligible destination marketing organization<sup>6</sup>, that employs no more than 300 employees;
- a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for your industry) per location; or
- another type of entity specifically provided for by PPP rules (as described below); and

ii. you were in operation on February 15, 2020, and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC or you were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees.

You must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable, payroll records, payroll tax filings, Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records.

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<sup>6</sup> See subsections 1.j., 1.k., and 1.m. for additional information on the eligibility of housing cooperatives, section 501(c)(6) organizations, and destination marketing organizations. The applicable size standard for these entities is not more than 300 employees.

*b. Are employees of foreign affiliates included for purposes of determining whether a PPP borrower has more than 500 employees (or 300 employees, if applicable)?<sup>7</sup>*

Yes. SBA's affiliation regulations provide that to determine a concern's size, employees of the concern "and all of its domestic and foreign affiliates" are included. 13 C.F.R. 121.301(f). Therefore, to calculate the number of employees of an entity for purposes of determining eligibility for the PPP, an entity must include all employees of its domestic and foreign affiliates, except in those limited circumstances where the affiliation rules expressly do not apply to the entity.<sup>8</sup> Any entity that, together with its domestic and foreign affiliates, does not meet the 500-employee, 300-employee,<sup>9</sup> or other applicable PPP size standard is therefore ineligible for a PPP loan. Under no circumstances may PPP funds be used to support non-U.S. workers or operations.

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<sup>7</sup> This subsection was originally published at 85 Fed. Reg. 30835, section III.1. (May 21, 2020) and has been modified for readability. Housing cooperatives, section 501(c)(6) organizations, and destination marketing organizations, added by the Economic Aid Act, must have no more than 300 employees to be eligible for PPP loans.

<sup>8</sup> Paragraph 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 and amended by the Economic Aid Act, waives SBA's affiliation rules 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; (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151. SBA also applies affiliation exceptions to certain categories of entities. 13 C.F.R. 121.103(b).

<sup>9</sup> For housing cooperatives, section 501(c)(6) organizations, and destination marketing organizations, the applicable size standard is not more than 300 employees. *See* subsections 1.j. and 1.m. For the applicable size standard for entities eligible to apply for Second Draw PPP Loans, see the interim final rule on Second Draw PPP Loans that is being published separately.

- c. *I have income from self-employment and file a Form 1040, Schedule C. Am I eligible for a PPP Loan?*<sup>10</sup>

You are eligible for a PPP loan if: (i) you were in operation on February 15, 2020; (ii) you are an individual with self-employment income (such as an independent contractor or a sole proprietor); (iii) your principal place of residence is in the United States; and (iv) you filed or will file a Form 1040 Schedule C for 2019 or meet the requirements below. However, if you are a partner in a partnership, you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred on a PPP loan application filed by or on behalf of the partnership. Partnerships are eligible for PPP loans under the CARES Act, as amended by the Economic Aid Act, and the Administrator has determined, in consultation with the Secretary of the Treasury (Secretary), that limiting a partnership and its partners (and 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 March 31, 2021. This limitation will allow lenders to more quickly process applications and lower the burdens of applying for partnerships/partners. The Administrator has further 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, and would generate loan

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<sup>10</sup> This subsection was originally published at 85 Fed. Reg. 21747, subsection III.1.a. (April 20, 2020) and has been modified to reflect subsequent interim final rules or guidance and the Economic Aid Act.



proceeds use coordination and allocation issues. Rent, mortgage interest, utilities, other debt service, operations expenditures, property damage costs, supplier costs, and worker protection expenditures 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. In addition, you should be aware that participation in the PPP may affect your 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. On June 26, 2020, SBA issued additional guidance for those individuals with self-employment income who: (i) were not in operation in 2019 but who were in operation on February 15, 2020, and (ii) filed a Form 1040 Schedule C for 2020. See “How To Calculate Maximum Loan Amounts – By Business Type,” Question 10 posted on SBA’s website.<sup>11</sup>

*d. Are eligible businesses owned by directors or shareholders of a PPP lender permitted to apply for a PPP loan through the lender with which they are associated?<sup>12</sup>*

SBA regulations (including 13 CFR 120.110 and 120.140) shall not apply to prohibit an otherwise eligible business owned (in whole or part) by an outside director or holder of a less than 30 percent equity interest in 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, provided that the eligible business owned by the director or equity holder follows the same process as any similarly situated customer or account holder of the lender.

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<sup>11</sup> [https://www.sba.gov/sites/default/files/2020-12/How-to-Calculate-Loan-Amounts-508\\_6-26-20.pdf](https://www.sba.gov/sites/default/files/2020-12/How-to-Calculate-Loan-Amounts-508_6-26-20.pdf) (April 20, 2020).

<sup>12</sup> This subsection was originally published at 85 Fed. Reg. 21747, subsection III.2.a. (April 20, 2020) and has been modified for readability.

Favoritism by the lender in processing time or prioritization of the director's or equity holder's PPP application is prohibited. Lenders should comply with all other applicable state and federal regulations concerning loans to associates of the lender. Lenders should also consult their own internal policies concerning lending to individuals or entities associated with the lender.

The foregoing paragraph does not apply to a director or owner who is also an officer or key employee of the PPP Lender. Officers and key employees of a PPP Lender may obtain a PPP Loan from a different lender, but not from the PPP Lender with which they are associated. SBA also reminds Lenders that the "Authorized Lender Official" for each PPP Loan is subject to the limitations described in the PPP Lender Application Form (SBA Form 2484), which states in relevant part: "Neither the undersigned Authorized Lender Official, nor such individual's spouse or children, has a financial interest in the Applicant [Borrower]."

*e. If a seasonal business was dormant or not fully operating as of February 15, 2020, is it still eligible?<sup>13</sup>*

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 12-week period between February 15, 2019 and February 15, 2020. This approach aligns the eligibility criteria for seasonal businesses being in operation with the time period for calculation of a seasonal employer's maximum loan amount from section 336 of the

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<sup>13</sup> This subsection was originally published at 85 Fed. Reg. 23917, subsection III.4. (April 30, 2020) and has been modified to reflect the Economic Aid Act.

Economic Aid Act and makes PPP loans available to seasonal businesses that operate outside of the original, more limited time frame.

- f. How does the 500 employee limit apply to news organizations with more than one physical location?<sup>14</sup>*

A business concern, or any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.), with more than one physical location that employs not more than 500 employees (or the size standard established by the Administrator for the NAICS code applicable to the business concern) per physical location, is eligible for a PPP loan if it: (1) is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 or 5151 or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))), has a trade or business that falls under such a code; and (2) makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information. See section 3 for the applicability of SBA's affiliation rules to news organizations.

- g. Industry-Specific Eligibility Issues*

- i. Is a hospital owned by governmental entities eligible for a PPP loan?<sup>15</sup>*

Notwithstanding 13 CFR 120.110(j), 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

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<sup>14</sup> This subsection has been added to conform to section 317 of the Economic Aid Act.

<sup>15</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.2.c. (April 28, 2020) and has been modified for readability.

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.

*ii. Are businesses that receive revenue from legal gaming eligible for a PPP Loan?<sup>16</sup>*

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 remain categorically ineligible.

*iii. Are electric cooperatives that are exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?<sup>17</sup>*

Yes. An electric cooperative that is exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code will be considered to be “a business entity organized for profit” for purposes of 13 CFR 121.105(a)(1). As a result, such entities are eligible PPP borrowers, as long as other eligibility requirements are met. To be eligible, an electric cooperative must satisfy the employee-based size standard established in the CARES Act, SBA’s employee-based size standard corresponding to its primary industry, if higher, or both tests in SBA’s “alternative size standard.”<sup>18</sup>

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<sup>16</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.2.d. (April 28, 2020) and has been modified for readability.

<sup>17</sup> This subsection was originally published at 85 Fed. Reg. 29847, subsection III.1. (May 19, 2020) and has been modified for readability.

<sup>18</sup> Under the alternative size standard, a business concern, including an electric cooperative, can qualify for the PPP as a small business concern if, as of March 27, 2020: (1) the maximum tangible net worth of the business was 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. For an electric cooperative that does not have net income, the cooperative’s savings distributed to its owner-members will be considered its net income.

*iv. Are telephone cooperatives that are exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?*<sup>19</sup>

Yes. A telephone cooperative that is exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code will be considered to be “a business entity organized for profit” for purposes of 13 CFR 121.105(a)(1). As a result, such entities are eligible PPP borrowers, as long as other eligibility requirements are met. To be eligible, a telephone cooperative must satisfy the employee-based size standard established in the CARES Act, SBA’s employee-based size standard corresponding to its primary industry, if higher, or both tests in SBA’s “alternative size standard.”<sup>20</sup>

*v. Are housing cooperatives as defined in section 216(b) of the Internal Revenue Code eligible for PPP loans?*<sup>21</sup>

Yes. Housing cooperatives (as defined in section 216(b) of the Internal Revenue Code of 1986) that employ not more than 300 employees are eligible to apply for PPP loans as long as other eligibility requirements are met. In addition, the provisions applicable to affiliation, described in section 3, apply to housing cooperatives in the same manner as with respect to a small business concern.

*vi. Are nonprofit and tax-exempt news organizations eligible for PPP loans?*<sup>22</sup>

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<sup>19</sup> This subsection was originally published at 85 Fed. Reg. 35550, subsection III.1. (June 11, 2020) and has been modified for readability.

<sup>20</sup> Under the alternative size standard, a business concern, including a telephone cooperative, can qualify for the PPP as a small business concern if, as of March 27, 2020: (1) the maximum tangible net worth of the business was 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. For a telephone cooperative that does not have net income, the telephone cooperative’s capital credits distributed to its owner-members will be considered its net income.

<sup>21</sup> This subsection has been added to conform to section 316 of the Economic Aid Act.

<sup>22</sup> This subsection has been added to conform to section 317 of the Economic Aid Act.

Yes. A public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11)) that is a nonprofit organization or any organization otherwise subject to section 511(a)(2)(B) of the Internal Revenue Code of 1986, and employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for the entity's industry) per location is eligible for a PPP loan if the organization has a trade or business that is assigned a NAICS code beginning with 511110 or 5151, and makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information.<sup>23</sup> See subsection B.1.f. for information on how the 500 employee limit applies to news organizations with more than one physical location. See section 3 for the applicability of SBA's affiliation rules to news organizations.

*vii. Are destination marketing organizations eligible for PPP loans?<sup>24</sup>*

Yes. Under the Economic Aid Act, any destination marketing organization<sup>25</sup> is eligible to receive a PPP loan as long as other eligibility requirements are met and if:

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<sup>23</sup> This subsection provides that an eligible nonprofit news organization under section 317 of the Economic Aid Act must have no more than 500 employees. (For those nonprofit news organizations with more than one physical location, they must have no more than 500 employees per location.) This will make PPP loans available to nonprofit news organizations, regardless of whether the organization would be a business concern under SBA regulations, if the nonprofit news organization satisfies the same general size standard applicable under the PPP rules to other borrowers that are nonprofit or tax-exempt organizations. The Administrator, in consultation with the Secretary, has determined this requirement appropriately implements section 317 of the Economic Aid Act by making PPP loans available to nonprofit news organizations on the same terms as other nonprofit organizations that have been made eligible for PPP loans.

<sup>24</sup> This subsection has been added to conform to section 318 of the Economic Aid Act.

<sup>25</sup> Section 318 of the Economic Aid Act added the following definition to paragraph 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)): "(xv) the term 'destination marketing organization' means a nonprofit entity that is -- (I) an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt

(1) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization; (3) the cost of the lobbying activities of the destination marketing organization did not exceed \$1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; (4) the destination marketing organization employs not more than 300 employees; and (5) the destination marketing organization: (a) is described in section 501(c) of the Internal Revenue Code and is exempt from taxation under section 501(a) of such Code; or (b) is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities.<sup>26</sup>

*viii. Are 501(c)(6) organizations eligible for PPP loans?<sup>27</sup>*

Yes. Any organization that is described in section 501(c)(6) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a PPP loan as long as other eligibility requirements are met and if: (1) the organization

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from tax under section 501(a) of such Code; or (II) a State, or a political subdivision of a State (including any instrumentality of such entities) -- (aa) engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, including -- (AA) assisting with the location of meeting and convention sites; (BB) providing travel information on area attractions, lodging accommodations, and restaurants; (CC) providing maps; and (DD) organizing group tours of local historical, recreational, and cultural attractions; or (bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events.

<sup>26</sup> A destination marketing organization that is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities, is eligible for a PPP loan notwithstanding the SBA regulation at 13 CFR 120.110(j), which states that government-owned entities (except for businesses owned or controlled by a Native American tribe) are not eligible for SBA financial assistance.

<sup>27</sup> This subsection has been added to conform to section 318 of the Economic Aid Act.

does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization; (3) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and (4) the organization employs not more than 300 employees.

2. *What businesses, organizations, and individuals are ineligible?*

a. *Could I be ineligible even if I meet the eligibility requirements in section 1?*<sup>28</sup>

You are ineligible for a PPP loan if, for example:

- i. You are engaged in any activity that is illegal under Federal, state, or local law;
- ii. You are a household employer (individuals who employ household employees such as nannies or housekeepers);
- iii. An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, 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, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year;

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<sup>28</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.a. (April 15, 2020), as amended by 85 Fed. Reg. 36308 (June 16, 2020), 85 Fed. Reg. 36717 (June 18, 2020), and 85 Fed. Reg. 38301 (June 26, 2020), and has been modified to conform to subsequent interim final rules or guidance and the Economic Aid Act and for readability.



- iv. You, or any business owned or controlled by you or any of your 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;
- v. Your business or organization was not in operation on February 15, 2020;<sup>29</sup>
- vi. You or your business received or will receive a grant under the Shuttered Venue Operator Grant program under section 324 of the Economic Aid Act;<sup>30</sup>
- vii. The President, the Vice President, the head of an Executive Department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in your business;<sup>31</sup>
- viii. Your business is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)<sup>32</sup> (SBA will not consider whether a news organization that is eligible under the conditions described in subsection 1.f. and 1.g.vi. is affiliated with an entity, which includes any entity that owns or controls such news organization, that is an issuer<sup>33</sup>); or

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<sup>29</sup> Added to conform to section 310 of the Economic Aid Act. This provision is effective as if included in the CARES Act and applies to any loan made pursuant to section 7(a)(36) of the Small Business Act before, on, or after December 27, 2020, including forgiveness of such a loan.

<sup>30</sup> Added to conform to section 310 of the Economic Aid Act. This provision applies to PPP loans made on or after December 27, 2020.

<sup>31</sup> Added to conform to section 322 of the Economic Aid Act. This provision applies to any loan made on or after December 27, 2020. For any loan made under section 7(a)(36) to a covered entity before December 27, 2020, *see* subsection B.16 of this interim final rule.

<sup>32</sup> Added to conform to section 342 of the Economic Aid Act, which also added the following definitions to paragraph 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)): “(xvi) the terms ‘exchange’, ‘issuer’, and ‘security’ have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).” This provision applies to loans made on or after December 27, 2020.

<sup>33</sup> *See* section 317 of the Economic Aid Act.

- ix. Your business has permanently closed.<sup>34</sup>
- b. *Are businesses that are generally ineligible for 7(a) loans under 13 CFR 120.110 eligible for a PPP loan?*<sup>35</sup>

Paragraphs (a), (g), and (k), of 13 C.F.R. 120.110 do not apply to PPP loans. For PPP loans, the ineligibility restriction in 13 C.F.R. 120.110(n) is superseded by subsection B.2.a.iii. of this interim final rule. Otherwise, a business is not eligible for a PPP loan if it is a type of business concern (or would be, if the entity were a business concern) described in 13 C.F.R. 120.110, except as permitted by subsections B.1.d and B.1.g of this rule or otherwise permitted by PPP rules. Businesses that are not generally eligible for a 7(a) loan under 13 C.F.R. 120.110 are described further in SBA's Standard Operating Procedure (SOP) 50 10 6, Part 2, Section A, Chapter 3.<sup>36</sup>

- c. *Will I be approved for a PPP loan if my business is in bankruptcy?*<sup>37</sup>

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

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<sup>34</sup> This provision prohibits an entity that has gone out of business and has no intention of reopening from receiving a PPP loan. The Administrator, in consultation with the Secretary, has determined this provision is necessary to maintain program integrity, prevent abuse, and prevent PPP loans being made to businesses that have permanently closed. Preserving funds for businesses in operation is necessary because only businesses that are still in operation will retain employees, which is a primary purposes of the PPP. PPP was not intended to support businesses that have permanently closed. A borrower that has temporarily closed or temporarily suspended its business but intends to reopen remains eligible for a PPP loan.

<sup>35</sup> This subsection replaces the subsection originally published at 85 Fed. Reg. 20811, subsection III.2.c. (*How do I determine if I am ineligible*) (April 15, 2020) and modified to conform to the Economic Aid Act.

<sup>36</sup> SOP 50 10 6 can be found at <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>. For PPP loans approved before December 27, 2020, see SOP 50 10 5(K), Subpart B, Chapter 2 for ineligible types of businesses. SOP 50 10 5(K) can be found at <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.

<sup>37</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.4. (April 28, 2020) and has been modified for readability.

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.

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.

*d. Is a hedge fund or private equity firm eligible for a PPP loan?*<sup>38</sup>

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.

*3. Affiliation rules generally*

*a. Are affiliates considered together for purposes of determining eligibility?*<sup>39</sup>

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP.<sup>40</sup> Under SBA rules, entities may be considered

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<sup>38</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.2.a. (April 28, 2020) and has been modified for readability.

<sup>39</sup> The text of this subsection was originally published at 85 Fed. Reg. 20817 (April 15, 2020).

<sup>40</sup> Paragraph 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 and amended by the Economic Aid Act, waives the affiliation rules contained in § 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; (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151.

affiliates based on factors including but not limited to stock ownership, overlapping management,<sup>41</sup> and identity of interest. See 13 CFR 121.301(f).

*b. How do SBA's affiliation rules affect my eligibility and apply to me under the PPP?<sup>42</sup>*

An entity generally is eligible for the PPP if it, combined with its affiliates, (i) is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), (ii) (1) has 500 or fewer employees<sup>43</sup> or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, if higher, and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a housing cooperative, a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, a section 501(c)(6) organization, a destination marketing organization, or any other business concern, or (iii) has 500 or fewer employees per location (or an applicable SBA employee-based size standard for that industry, if higher) and is either majority owned or controlled by a NAICS code 511110 or 5151 business or is a nonprofit public broadcasting entity with a trade or business under NAICS code

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This interim final rule has no effect on these statutory waivers, which remain in full force and effect. As a result, the affiliation rules contained in section 121.301 also do not apply to these types of entities. In addition, paragraph 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D)), as amended by section 342 of the Economic Aid Act states that, with respect to a business concern made eligible under paragraph 7(a)(36)(D)(iii)(II) or (iv)(IV) (certain news organizations), the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern, is an issuer.

<sup>41</sup> 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 (including under a management agreement). 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.

<sup>42</sup> The text of this subsection was originally published at 85 Fed. Reg. 20817 (April 15, 2020) and has been modified to conform to the Economic Aid Act.

<sup>43</sup> For housing cooperatives, section 501(c)(6) organizations, and destination marketing organizations, the applicable size standard is not more than 300 employees.

511110 or 5151. 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 CARES Act made such nonprofit organizations not only eligible for the PPP, but also subjected them to SBA's affiliation rules. As amended, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) now provides that the provisions applicable to affiliations under 13 CFR 121.103 apply with respect to nonprofit organizations, housing cooperatives, and veterans organizations in the same manner as with respect to small business concerns. However, the detailed affiliation standards contained in § 121.103 currently do not apply to PPP borrowers, because § 121.103(a)(8) provides that applicants in SBA's Business Loan Programs (which include the PPP) are subject to the affiliation rules contained in 13 CFR 121.301.

*c. Faith-Based Organizations<sup>44</sup>*

This rule exempts otherwise qualified faith-based organizations from the SBA's affiliation rules, including those set forth in 13 CFR part 121, where the application of the affiliation rules would substantially burden those organizations' religious exercise. For the reasons described in 85 Fed. Reg. 20817, the SBA's affiliation rules, including those set forth in 13 CFR part 121, 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 that is based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form. A

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<sup>44</sup> The text of this subsection was originally published at 85 Fed. Reg. 20817 (April 15, 2020) and has been modified for readability.

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

- d. *Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan?*<sup>45</sup>

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.<sup>46</sup> 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.”

- e. *Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?*<sup>47</sup>

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.

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<sup>45</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.2.b. (April 28, 2020).

<sup>46</sup> However, the CARES Act waives the affiliation rules if the borrower receives financial assistance from an SBA-licensed Small Business Investment Company (SBIC) in any amount. This includes any type of financing listed in 13 CFR 107.50, such as loans, debt with equity features, equity, and guarantees. Affiliation is waived even if the borrower has investment from other non-SBIC investors.

<sup>47</sup> This subsection was originally published at 85 Fed. Reg. 23450, section III.3. (April 28, 2020) and has been modified for readability.

4. *I have determined that I am eligible. How much can I borrow?*<sup>48</sup>

Under the PPP, the maximum loan amount for First Draw PPP Loans is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula authorized by the Act, as explained below.<sup>49</sup> PPP loans approved in 2020 used 2019 or the 1-year before the date on which the loan is made to calculate payroll costs for purposes of calculating the maximum loan amount. Borrowers who apply for PPP loans 2021 and who are not self-employed (including sole proprietorships and independent contractors) are also permitted to use the precise 1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020. Since most borrowers will use 2019 or 2020 the rule text refers only to 2019 or 2020 for simplicity and readability.

a. *How do I calculate the maximum amount I can borrow?*<sup>50</sup>

The following methodology, which is one of the methodologies authorized by the Act, will be most useful for many applicants.

- i. Step 1: Aggregate payroll costs (defined in detail below in subsections 4.g. and 4.h.) from 2019 or 2020 for employees whose principal place of residence is the United States.

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<sup>48</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.d. (April 15, 2020) and has been modified to conform to additional interim final rules or guidance and the Economic Aid Act.

<sup>49</sup> See subsection 4.d. for maximum loan amount applicable to certain farmers and ranchers. For the maximum loan amount for Second Draw PPP Loans, see the the interim final rule on Second Draw PPP Loans that is being published separately.

<sup>50</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.d. (April 15, 2020) and has been modified to conform to additional rules or guidance and the Economic Aid Act.

- ii. Step 2: Subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.<sup>51</sup>
- iii. Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- iv. Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
- v. Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

The examples below illustrate this methodology.

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

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Maximum loan amount is \$25,000

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

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000:

\$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

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<sup>51</sup> See subsection 4.j for treatment of amounts paid to independent contractors.



Maximum loan amount is \$250,000

iii. Example 3 – No employees make more than \$100,000, outstanding EIDL loan of \$10,000.

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Add EIDL loan of \$10,000 = \$35,000

Maximum loan amount is \$35,000

iv. Example 4 – Some employees make more than \$100,000, outstanding EIDL loan of \$10,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000:

\$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Add EIDL loan of \$10,000 = \$260,000

Maximum loan amount is \$260,000

You must provide your Form 941 (or other tax forms containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions. A payroll statement or similar documentation from the pay period that

covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.<sup>52</sup>

*b. I have income from self-employment and file a Form 1040, Schedule C, how do I calculate the maximum amount I can borrow and what documentation is required?*<sup>53</sup>

How you calculate your maximum loan amount depends upon whether or not you employ other individuals. If you have no employees, the following methodology should be used to calculate your maximum loan amount:

- i. Step 1: Find your 2019 or 2020 IRS Form 1040 Schedule C line 31 net profit amount (if you are using 2020 to calculate payroll costs and have not yet filed a 2020 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is zero or less, you are not eligible for a PPP loan.
- ii. Step 2: Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).
- iii. Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.
- iv. Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

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<sup>52</sup> This subsection clarifies the documentation that must be submitted with an applicant's loan application to substantiate the borrower's payroll costs. This requirement applies to loans made after December 27, 2020. For documentation requirements for PPP loans made before December 27, 2020, *see* 85 Fed. Reg. 20811, subsection III.1.e. (April 15, 2020).

<sup>53</sup> This subsection was originally published at 85 Fed. Reg. 21747, subsection III.1.b. (April 20, 2020) and has been modified to conform to additional rules or guidance and the Economic Aid Act.

You must provide the 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed. If using 2020 to calculate loan amount, this is required regardless of whether you have filed a 2020 tax return with the IRS. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

If you have employees, the following methodology should be used to calculate your maximum loan amount:

- i. Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:
  - a. Your 2019 or 2020 Form 1040 Schedule C line 31 net profit amount (if you are using 2020 and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is over \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero;
  - b. 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 or 2020 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; subtract any

amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose principal place of residence is outside the United States; and

- c. 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule C line 14 attributable to those contributions); retirement contributions (Form 1040 Schedule C line 19), and 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).
- ii. Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).
- iii. Step 3: Multiply the average monthly amount from Step 2 by 2.5.
- iv. Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must supply your 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule C, Form 941 (or other tax forms or equivalent payroll processor records containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate loan amount) or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable. A payroll statement or similar

documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

*c. How does a seasonal employer calculate the maximum PPP loan amount?<sup>54</sup>*

As defined by section 315 of the Economic Aid Act, a borrower is a seasonal employer if it does not operate for more than 7 months in any calendar year or, during the preceding calendar year, it had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts for the other 6 months of that year. Under section 336 of the Economic Aid Act, a seasonal employer must determine its maximum loan amount for purposes of the PPP by using the employer's average total monthly payments for payroll for any 12-week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020.

*d. How do farmers and ranchers calculate the maximum PPP loan amount?<sup>55</sup>*

How you calculate your maximum loan amount depends upon whether you employ other individuals. If you have no employees, the following methodology should be used to calculate your maximum loan amount:

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<sup>54</sup> This subsection has been added to conform to section 336 of the Economic Aid Act. Except for loans made pursuant to section 7(a)(36) of the Small Business Act for which SBA has remitted a loan forgiveness payment to the lender before December 27, 2020, it is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan. Previous guidance issued for seasonal employers stated as follows: "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' average total monthly payments for payroll 'the 12-week period beginning February 15, 2019, or at the election of the eligible [borrower], March 1, 2019, and ending June 30, 2019.' Under this interim final rule issued pursuant to section 1109 of the Act, 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." 85 Fed. Reg. 23917 (April 30, 2020).

<sup>55</sup> This subsection has been added to conform to section 313 of the Economic Aid Act. This provision applies to a farmer or rancher who (1) operates as a sole proprietorship, an independent contractor, or is an eligible self-employed individual; (2) reports farm income or expenses on a Schedule F (or any equivalent successor schedule); and (3) was in business as of February 15, 2020. This provision is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan.

- i. Step 1: Find your 2019 or 2020 IRS Form 1040 Schedule F line 9 gross income (if you are using 2020 and you have not yet filed a 2020 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is zero or less, you are not eligible for a PPP loan.
- ii. Step 2: Divide the amount from Step 1 by 12.
- iii. Step 3: Multiply the average monthly gross income amount from Step 2 by 2.5.
- iv. Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and ending on April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must provide the 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule F with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

If you have employees, the following methodology should be used to calculate your maximum loan amount:

- i. Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:
  - a. The difference between your 2019 or 2020 Form 1040 Schedule F line 9 gross income amount (if you are using 2020 and you have not yet filed a 2020

return, fill it out and compute the value), and the sum of Schedule F lines 15, 22, 23, and 37, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is over \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero;<sup>56</sup>

- b. 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 or 2020 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; subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose principal place of residence is outside the United States; and
- c. 2019 or 2020 employer contributions for employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule F line 15 attributable to those contributions), employer contributions for employee retirement contributions (Form 1040 Schedule F line 15), and state and local taxes assessed on employers for employee compensation (primarily

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<sup>56</sup> Any employee payroll costs should be subtracted from the farmer's or rancher's gross income to avoid double-counting amounts that represent pay to the employees of the farmer or rancher.

under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

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

You must supply your 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule F, Form 941 (or other tax forms or equivalent payroll processor records containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate loan amount) or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

A farmer or rancher who received a PPP loan before December 27, 2020 may request a recalculation of the maximum loan amount based on the formula described above regarding gross income, if doing so would result in a larger covered loan amount and may receive an increase in its PPP loan based on the recalculation.

*e. How do partnerships calculate the maximum loan amount?*

The following methodology should be used to calculate the maximum amount that partnerships can borrow:



- (i) Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding (1) net earnings from self-employment of individual general partners in 2019 or 2020, as reported on IRS Form 1065 K-1, reduced by section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235,<sup>57</sup> that is not more than \$100,000 per partner; (2) 2019 or 2020 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 or 2020 IRS Form 941 Taxable Medicare wages and 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 and 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; (3) 2019 or 2020 employer contributions for employee group health, life, disability, vision and dental insurance, if any (portion of IRS Form 1065 line 19 attributable to those contributions); (4) 2019 or 2020 employer contributions to employee retirement plans, if any (IRS Form 1065 line 18); and (5) 2019 or 2020 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms), if any.

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<sup>57</sup> This treatment follows the computation of self-employment tax from IRS Form 1040 Schedule SE Section A line 4 and removes the “employer” share of self-employment tax, consistent with how payroll costs for employees in the partnership are determined.

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

You must supply 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1065 (including K-1s) and other relevant supporting documentation if the partnership has employees, including the 2019 or 2020 (whichever you used to calculate loan amount) 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. 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

*f. Can a single corporate group receive unlimited PPP loans?<sup>58</sup>*

No. 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, businesses that are part of a single corporate group shall in no event receive more than \$20,000,000 of

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<sup>58</sup> This subsection was originally published at 85 Fed. Reg. 26324, subsection III.1. (May 4, 2020).

PPP loans in the aggregate.<sup>59</sup> 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. It is the responsibility of an applicant for a PPP loan to notify the lender if the applicant has applied for or received PPP loans in excess of the amount permitted by this interim final rule and withdraw or request cancellation of any pending PPP loan application or approved PPP loan not in compliance with the limitation set forth in this rule. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness. A lender may rely on an applicant's representation concerning the applicant's compliance with this limitation.

The Administrator, in consultation with the Secretary, determined that limiting the amount of PPP loans that a single corporate group may receive will promote the availability of PPP loans to the largest possible number of borrowers, consistent with the CARES Act. The Administrator has concluded that a limitation of \$20,000,000 strikes an appropriate balance between broad availability of PPP loans and program resource constraints.

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 this limitation even if the businesses are eligible for

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<sup>59</sup> The Administrator has authority to issue "such rules and regulations as [the Administrator] deems necessary to carry out the authority vested in [her] by or pursuant to" 15 U.S.C. Chapter 14A, including authorities established under section 1102 of the CARES Act. Section 1102 provides that the Administrator "may" guarantee loans under the terms and conditions set forth in section 7(a) of the Small Business Act, and those conditions specify a "maximum" – but not a minimum – loan amount. *See* 15 U.S.C. 636(a)(36)(B), (E); *see also* CARES Act section 1106(k) (authorizing SBA to issue regulations to govern loan forgiveness). To preserve finite appropriations for PPP loans and ensure broad access for eligible borrowers, the Administrator, in consultation with the Secretary, has determined that an aggregate limitation on loans to a single corporate group is necessary and appropriate.

the waiver-of-affiliation provision under the CARES Act or are otherwise not considered to be affiliates under SBA's affiliation rules.<sup>60</sup>

This rule has no effect on lender obligations required to obtain an SBA guarantee for PPP loans.

*g. What qualifies as "payroll costs?"<sup>61</sup>*

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance,<sup>62</sup> including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

*h. Is there anything that is expressly excluded from the definition of payroll costs?<sup>63</sup>*

Yes. The Act expressly excludes the following:

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<sup>60</sup> See 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; 13 CFR 121.103(b).

<sup>61</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.f. (April 15, 2020) and has been modified to conform to the Economic Aid Act.

<sup>62</sup> This provision has been modified to conform to section 308 of the Economic Aid Act. This revision is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

<sup>63</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.g. (April 15, 2020) and has been modified to conform to section 344 the Economic Aid Act.

- i. Any compensation of an employee whose principal place of residence is outside of the United States;
  - ii. The compensation of an individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred;
  - iii. Federal employment taxes imposed or withheld during the applicable period, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
  - iv. 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).
- i. May fishing boat owners include payroll costs in their PPP loan applications that are attributable to crewmembers described in section 3121(b)(20) of the Internal Revenue Code?<sup>64</sup>*
- Yes. A fishing boat owner may include compensation reported on Box 5 of IRS Form 1099-MISC and paid to a crewmember described in section 3121(b)(20) of the Code, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, as a payroll cost in its PPP loan application.
- j. Do independent contractors count as employees for purposes of PPP loan calculations?<sup>65</sup>*

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<sup>64</sup> This subsection was originally published at 85 Fed. Reg. 39066, subsection III.1. (June 30, 2020) and has been modified to conform to section 344 the Economic Aid Act and for readability.

<sup>65</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.h. (April 15, 2020).

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.<sup>66</sup>

k. *Do student workers count when determining the number of employees for PPP loan eligibility?*<sup>67</sup>

Yes. Student workers generally count as employees, unless (a) the applicant is an institution of higher education, as defined in the Department of Education's Federal Work-Study regulations, 34 C.F.R. 675.2, and (b) the student worker's services are performed as part of a Federal Work-Study Program (as defined in those regulations<sup>68</sup>) or a substantially similar program of a State or political subdivision thereof. Institutions of higher education must exclude work study students when determining the number of employees for PPP loan eligibility, and must also exclude payroll costs for work study students from the calculation of payroll costs used to determine their PPP loan amount.

5. *What is the interest rate on a PPP loan?*<sup>69</sup>

The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.<sup>70</sup>

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<sup>66</sup> See subsection 4.i. regarding fishing boat owners including payroll costs for their crewmembers in the calculation of the PPP loan amount.

<sup>67</sup> This subsection was originally published at 85 Fed. Reg. 27287, section III.2. (May 8, 2020) and has been modified for readability.

<sup>68</sup> The Department of Education's Federal Work-Study Programs described at 34 CFR Part 675 are (1) the Federal Work-Study Program, (2) the Job Location and Development Program, and (3) Work Colleges Program.

<sup>69</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.i. (April 15, 2020) and has been modified to conform to additional interim final rules or guidance and the Economic Aid Act.

<sup>70</sup> Revised to conform to section 339 of the Economic Aid Act. The revision applies to PPP loans made on or after December 27, 2020, but may apply with respect to a PPP loan made before that date upon the mutual agreement of the lender and the borrower. A one percent interest 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. Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities.

6. *What will be the maturity date on a PPP loan?*<sup>71</sup>

The maturity is five years.

7. *Can I apply for more than one First Draw PPP Loan?*<sup>72</sup>

No. Except as set forth in subsection D.8, the Administrator, in consultation with the Secretary, determined that no eligible borrower may receive more than one First Draw PPP Loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount. Any borrower who received a PPP loan in 2020 received a First Draw PPP Loan and is not eligible to receive another First Draw PPP Loan, but may be eligible for a second draw PPP loan.<sup>73</sup>

8. *Can I use e-signatures or e-consents if a borrower has multiple owners?*<sup>74</sup>

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

9. *When will I have to begin paying principal and interest on my PPP loan?*<sup>75</sup>

If you submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you will not have to make any payments of principal or interest on your loan before the date on which SBA remits the loan forgiveness amount on your loan to your lender (or notifies your lender that no loan forgiveness is allowed).

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<sup>71</sup> This subsection was originally published at 85 Fed. Reg. 36308, subsection III.1.b. (June 16, 2020) and has been modified for readability.

<sup>72</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.i. (“*Can I apply for more than one PPP loan?*”) (April 15, 2020) and has been modified to conform to the Economic Aid Act and for readability. PPP borrowers may be eligible for a loan under section 7(a)(37) of the Small Business Act, “Paycheck Protection Program Second Draw Loans,” *see* interim final rule on Second Draw PPP Loans that is being published separately.

<sup>73</sup> *See* interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans, which is being published separately.

<sup>74</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.l. (April 15, 2020).

<sup>75</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.n. (April 15, 2020), as amended by 85 Fed. Reg. 36038 (June 16, 2020), and has been modified to conform to the Economic Aid Act.

Your “loan forgiveness covered period” is the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement. Your lender must notify you of remittance by SBA of the loan forgiveness amount (or notify you that SBA determined that no loan forgiveness is allowed) and the date your first payment is due. Interest continues to accrue during the deferment period.

If you do not submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you must begin paying principal and interest after that period. For example, if a borrower’s PPP loan is disbursed on January 25, 2021, the 24-week period ends on July 12, 2021. If the borrower does not submit a loan forgiveness application to its lender by May 12, 2022, the borrower must begin making payments on or after May 12, 2022.

*10. What forms do I need and how do I submit an application for a PPP loan?<sup>76</sup>*

The applicant must submit Paycheck Protection Program Borrower Application Form (SBA Form 2483), or lender’s equivalent form, and payroll documentation, as described above. The lender must submit SBA Form 2484, Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty, electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

*11. How can PPP loans be used?<sup>77</sup>*

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

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<sup>76</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.q. (April 15, 2020).

<sup>77</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.r. (April 15, 2020), as amended by 85 Fed. Reg. 36308 (June 16, 2020) and has been modified to conform to the Economic Aid Act.



- i. payroll costs (as defined in the CARES Act, Economic Aid Act and this interim final rule);
- ii. costs related to the continuation of group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision, or dental insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020;
- vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020;<sup>78</sup>
- viii. covered operations expenditures (payments for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses);<sup>79</sup>

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<sup>78</sup> Under paragraph 7(a)(36)(Q) of the Small Business Act, as amended by section 341 of the Economic Aid Act, an EIDL loan used for purposes other than paying payroll costs and other eligible PPP expenditures is not considered a duplication of the assistance available under the PPP.

<sup>79</sup> Items viii. through xi. were added to conform to section 304 of the Economic Aid Act. These provisions are effective as if included in the CARES Act and apply to any loan made before, on, or after December 27, 2020, including forgiveness of such loan, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan. Section 1106 of the CARES Act (15 U.S.C. 9005) was redesignated as section 7A, transferred to the Small Business Act (15 U.S.C. 631 et seq.), and inserted so as to appear after section 7 of the Small Business Act (15 U.S.C. 636) in section 304(b) of the Economic Aid Act.

- ix. covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation);
- x. covered supplier costs (expenditures made by a borrower to a supplier of goods for the supply of goods that—(A) are essential to the operations of the borrower at the time at which the expenditure is made; and (B) is made pursuant to a contract, order, or purchase order—(i) in effect at any time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan); and
- xi. covered worker protection expenditures ((A) operating or a capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency with respect to the COVID–19 expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19; (B) such expenditures may include—(i) the purchase, maintenance, or renovation of assets that create or expand—(I) a drive-through window facility; (II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (III) a physical barrier such as a sneeze guard; (IV) an expansion of

additional indoor, outdoor, or combined business space; (V) an onsite or offsite health screening capability; or (VI) other assets relating to the compliance with the requirements or guidance described in subparagraph (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (ii) the purchase of—(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation; (II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or (III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (C) such expenditures do not include residential real property or intangible property).

At least 60 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, 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. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. This percentage is consistent with the limitation on the forgiveness amount set forth in the Flexibility Act. This

limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

- b. How can PPP loans be used by individuals with income from self-employment who file a Form 1040, Schedule C?*<sup>80</sup>

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

- i. Owner compensation replacement, calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) net profit as described in subsection 4.b.
- ii. Employee payroll costs (as defined in this interim final rule) for employees whose principal place of residence is in the United States, if you have employees.
- iii. Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (*e.g.*, the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments (*e.g.*, the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (*e.g.*, the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule C for them to be a permissible use.

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<sup>80</sup> This subsection was originally published at 85 Fed. Reg. 21747, subsection III.1.d. (April 20, 2020) and has been modified to conform to the Economic Aid Act.

For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 or 2020 Form 1040 Schedule C, you cannot use the proceeds for utilities.

- iv. Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).
- v. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP's maturity of two years for PPP loans made before June 5, 2020 unless the borrower and lender mutually agree to extend the maturity of such loans to five years, or PPP's maturity of five years for PPP loans made on or after June 5).<sup>81</sup>
- vi. Covered operations expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- vii. Covered property damage costs, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- viii. Covered supplier costs, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- ix. Covered worker protection expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.<sup>82</sup>

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<sup>81</sup> Under section 7(a)(36)(Q) of the Small Business Act, as amended by section 341 of the Economic Aid Act, an EIDL loan used for purposes other than paying payroll costs and other eligible PPP expenditures is not considered a duplication of the assistance available under the PPP.

<sup>82</sup> Items vi. through ix. were added to conform to section 304 of the Economic Aid Act. These provisions are effective as if included in the CARES Act and apply to any loan made before, on, or after December 27, 2020, including forgiveness of such loan, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan.

The Administrator, in consultation with the Secretary, 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 or 2020 or that were used on covered property damage, as defined in section 7A(a). The Administrator has determined that this limitation on self-employed individuals who file a Form 1040 Schedule C is consistent with the borrower certification required by the Act; specifically, that the PPP loan is necessary "to support the ongoing operations" of the borrower. The Administrator and the Secretary thus believe that this limitation is consistent with the structure of the Act to maintain existing operations and payroll and not for business expansion. This 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.

*c. Can PPP proceeds be used for lobbying activities or expenditures?*<sup>83</sup>

No. None of the proceeds of a PPP loan may be used for (1) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602); (2) lobbying expenditures related to a State or local election; or (3) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

*d. What happens if PPP loan funds are misused?*<sup>84</sup>

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<sup>83</sup> This subsection has been added to conform to section 319 of the Economic Aid Act.

<sup>84</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.s. (April 15, 2020).

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

*12. What certifications need to be made?<sup>85</sup>*

On the PPP borrower application, an authorized representative of the applicant must certify in good faith to all of the below:<sup>86</sup>

- i. The Applicant was in operation on February 15, 2020, has not permanently closed, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
- ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- iii. The funds will be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules; I

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<sup>85</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.s. (April 15, 2020), as amended by 85 Fed. Reg. 36308 (June 16, 2020) and has been modified to conform to the Economic Aid Act and the revised PPP Borrower Application Form (SBA Form 2483).

<sup>86</sup> A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so. The certifications have been revised to conform to the Economic Aid Act and the revised PPP Borrower Application Form (SBA Form 2483).

understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. (As explained above, not more than 40 percent of loan proceeds may be used for nonpayroll costs.)

- iv. I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. If required, the Applicant will provide to the Lender and/or SBA documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of eligible expenses for the covered period following this loan.
- v. The Applicant has not and will not receive another loan under the Paycheck Protection Program, section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (this does not include Paycheck Protection Program second draw loans, section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37))).
- vi. The Applicant has not and will not receive a Shuttered Venue Operator grant from SBA.
- vii. The President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, does not directly or indirectly hold a controlling interest in the Applicant, with such terms having the meanings provided in section 322 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.



- viii. The Applicant is not an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).
- ix. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 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 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- x. I acknowledge that the Lender will confirm the eligible loan amount using required documents submitted. I 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.

*13. Limited safe harbor with respect to certification concerning need for PPP loan request.<sup>87</sup>*

The CARES Act requires each applicant applying for a PPP loan to certify in good faith “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing obligations” of the applicant. SBA, in consultation with the

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<sup>87</sup> This subsection has been added to codify the safe harbor contained in FAQ 46 (posted May 13, 2020).

Department of the Treasury, issued additional guidance on May 13, 2020 concerning how SBA will review the required good-faith certification. *See* FAQ 46 (posted May 13, 2020). This guidance included a safe harbor providing that any PPP borrower, together with its affiliates, that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

*14. Can my PPP loan be forgiven in whole or in part?*<sup>88</sup>

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. An eligible borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes and employee and compensation levels are maintained or, if not, an applicable safe harbor or exemption applies. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs (including employer contributions for group health, life, disability, vision and dental insurance), payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, utility payments for service that began before February 15, 2020, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures over the loan forgiveness covered period.<sup>89</sup>

Payroll costs that are qualified wages taken into account in determining the Employer

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<sup>88</sup> This subsection replaces the rule originally published at 85 Fed. Reg. 20811, subsection III.2.o (April 15, 2020), as amended by 85 Fed. Reg. 36308 (June 16, 2020) and has been modified to conform to the Economic Aid Act.

<sup>89</sup> Covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures were added as eligible expenses in section 304 of the Economic Aid Act. Except for loans made pursuant to section 7(a)(36) of the Small Business Act for which SBA has remitted a loan forgiveness payment to the lender before December 27, 2020, these eligible expenses apply to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

Retention Credit are not eligible for loan forgiveness. The “loan forgiveness covered period” is the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement.

To receive full loan forgiveness, a borrower must use at least 60 percent of the PPP loan for payroll costs, and not more than 40 percent of the loan forgiveness amount may be attributable to nonpayroll costs. For example, if a borrower uses 59 percent of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60 percent of the forgiveness amount must be attributable to payroll costs. For example, if a borrower receives a \$100,000 PPP loan, and during the covered period the borrower spends \$54,000 (or 54 percent) of its loan on payroll costs, then because the borrower used less than 60 percent of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60 percent of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount). Because the Economic Aid Act changed the loan forgiveness covered period from either an 8- or 24-week period to a covered period between 8 and 24 weeks at the election of the borrower, SBA is eliminating the “alternative covered period” as defined in the interim final rule published at 85 Fed. Reg. 33004, 33006 (June 1, 2020), as amended.

Additionally, an eligible borrower that received a loan of \$150,000 or less shall not, at the time of its application for loan forgiveness, be required to submit any application or

documentation in addition to the certification and information required by paragraph 7A(l)(1)(A) of the Small Business Act. Such borrowers must retain records relevant to the form that prove compliance with the PPP requirements —with respect to employment records, for the 4-year period following submission of the loan forgiveness application, and with respect to other records, for the 3-year period following submission of the loan forgiveness application. All other borrowers must follow the existing requirements for loan forgiveness applications and records retention. SBA may review and audit PPP loans of \$150,000 or less and access any records the borrower is required to retain. All borrowers with loans of any size must provide documentation independently to a lender to satisfy relevant Federal, State, local or other statutory or regulatory requirements or in connection with an SBA loan review.

The Economic Aid Act repealed the CARES Act provision requiring SBA to deduct EIDL Advance Amounts received by borrowers from the forgiveness payment amounts remitted by SBA to the lender. The EIDL Advance Amount received by the borrower will not reduce the amount of forgiveness to which the borrower is entitled and will not be deducted from the forgiveness payment amount that SBA remits to the lender. Any EIDL Advance Amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest to the remittance date.

*15. Do independent contractors count as employees for purposes of PPP loan forgiveness?<sup>90</sup>*

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

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<sup>90</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.2.p. (April 15, 2020).

*16. For loans made prior to December 27, 2020, what additional documentation must a borrower submit when the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding, directly or indirectly holds a controlling interest in the borrower?*

For PPP loans made before December 27, 2020, if the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the borrower, the principal executive officer, or individual performing a similar function, of the borrower must disclose that information to SBA. Such disclosure must be made not later than January 26, 2021, if the borrower submitted an application for forgiveness before December 27, 2020, or not later than 30 days after submitting an application for forgiveness.

**C. *What Do Lenders Need to Know and Do?***

*1. Who is eligible to make PPP loans?<sup>91</sup>*

- a. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.
- b. The Act provides that the authority to make PPP loans can be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. Since SBA is authorized to make PPP loans (and loans under section 7(a)(37) of the Small Business Act) up to \$806.45 billion by March 31,

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<sup>91</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.3.a. (April 15, 2020) and has been modified to conform to additional interim final rules or guidance and sections 323 and 343 of the Economic Aid Act.

2021, the Administrator and the Secretary have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by the March 31, 2021 deadline.

c. The following types of lenders have been determined to meet the criteria and are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action with their primary Federal regulator that addresses unsafe or unsound lending practices:

- i. Any federally insured depository institution or any federally insured credit union;
- ii. Any Farm Credit System institution<sup>92</sup> (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C. 2002(a) that applies the requirements under the Bank Secrecy Act and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by this rule;  
and
- iii. Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial

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<sup>92</sup> Section 314 of the Economic Aid Act contains the following information related to Farm Credit System Institutions: “(1) APPLICABLE RULES.—Solely with respect to loans under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), Farm Credit Administration regulations and guidance issued as of July 14, 2020, and compliance with such regulations and guidance, shall be deemed functionally equivalent to requirements referenced in section 3(a)(iii)(II) of the interim final rule of the Administration entitled ‘Business Loan Program Temporary Changes; Paycheck Protection Program’ (85 Fed. Reg. 20811 (April 15, 2020)) or any similar requirement referenced in that interim final rule in implementing such paragraph (37).”

receivables and participation interests; has a formalized compliance program; applies the requirements under the BSA as a federally regulated financial institution, or the BSA requirements of an equivalent federally regulated financial institution; has been operating since at least February 15, 2019, and has originated, maintained, or 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 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.<sup>93</sup>

- d. Qualified institutions described in 1.c.i. and ii. will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506) unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action by their primary Federal regulator that addresses unsafe or unsound lending practices.
- e. A non-bank lender may be approved to make PPP loans if it has originated, maintained, or serviced more than \$10 million in business loans or other commercial financial receivables during a 12-month period in the past 36 months,

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<sup>93</sup> This subsection c.iii. was modified to implement the rule originally published at 85 Fed. Reg. 26324, subsection III.2.a. (May 4, 2020).

if the non-bank lender is (1) a community development financial institution (other than a federally insured bank or federally insured credit union) or (2) a majority minority-, women-, or veteran/military-owned lender.<sup>94</sup>

2. *Do lenders have to register in SAM.gov to make PPP loans?*<sup>95</sup>

Yes. Given the exigent circumstances in which small businesses and lenders currently find themselves due to the COVID-19 pandemic, PPP lenders will have thirty (30) days from the date of the first PPP loan disbursement made by them after December 27, 2020 to complete SAM registration and provide SBA with the lender's unique entity identifier.

3. *What do lenders have to do in terms of loan underwriting?*<sup>96</sup>

Each lender shall:

- a. Confirm receipt of borrower certifications contained in Paycheck Protection Program Borrower Application Form (SBA Form 2483) issued by the Administration or lender's equivalent form;
- b. Confirm receipt of information demonstrating that a borrower was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees or had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;

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<sup>94</sup> Lenders described in this subsection (e.) should follow the special instructions in footnote 1 of the 1102 Lender Agreement – Non-Bank and Non-Insured Depository Institution Lenders (SBA Form 3507). This subsection (e.) was adapted from the rule originally published at 85 Fed. Reg. 26324, subsection III.2.b. (May 4, 2020).

<sup>95</sup> This subsection adds a new requirement that all PPP lenders must register in SAM.gov. See 2 CFR 25.110(c)(2)(iii).

<sup>96</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.3.b. (April 15, 2020) and has been modified to conform to additional rules or guidance and the Economic Aid Act



- c. Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 by reviewing the payroll documentation submitted with the borrower's application;<sup>97</sup> and
- d. Follow applicable BSA requirements:
  - i. Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP. 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.
  - ii. Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Depending upon the comparable federally regulated institution, such a program may include a customer identification program (CIP), which includes identifying and verifying their PPP borrowers' identities (including e.g., date of birth, address, and taxpayer identification number), and, if that PPP borrower is a company, following any applicable beneficial

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<sup>97</sup> See PPP FAQ 1 (April 3, 2020) for further information on this step.

ownership information collection requirements. Alternatively, if available, entities may rely on the CIP of a federally insured depository institution or federally insured credit union with an established CIP as part of its AML program. In either instance, entities should also understand the nature and purpose of their PPP customer relationships to develop customer risk profiles. Such entities will also generally have to identify and report certain suspicious activity to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). If such entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at [FRC@fincen.gov](mailto:FRC@fincen.gov). In addition, FinCEN has created a COVID-19-specific contact channel, via a specific drop-down category, for entities to communicate to FinCEN COVID-19-related concerns while adhering to their BSA obligations. Entities that wish to communicate such COVID-19-related concerns to FinCEN should go to [www.FinCEN.gov](http://www.FinCEN.gov), click on "Need Assistance," and select "COVID19" in the subject drop-down list.

Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Borrower Application Form." Borrowers must submit such documentation as is necessary to establish eligibility such as payroll records, payroll tax filings, or Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records. 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.

A lender may rely on any certification or documentation submitted by an applicant for a PPP loan or an eligible recipient or eligible entity that (A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to a PPP loan, including under paragraph 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)); and (B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance related to PPP loans. With respect to a lender that relies on such a certification or documentation related to a PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the PPP loan, if— (A) the lender acts in good faith relating to loan origination or forgiveness of the PPP loan based on that reliance; and (B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the PPP loan.<sup>98</sup>

4. *Can lenders rely on borrower documentation for loan forgiveness?*<sup>99</sup>

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<sup>98</sup> This paragraph was added to conform to section 305 of the Economic Aid Act. This shall be effective as if included in the CARES Act and shall apply to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

<sup>99</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.3.c. (April 15, 2020) and has been modified for readability. SBA also intends to issue a consolidated interim final rule governing all aspects of loan forgiveness and the loan review process.

Yes. The lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

5. *What fees will lenders be paid?*<sup>100</sup>

For PPP loans made on or after December 27, 2020, SBA will pay lenders fees, based on the balance of the financing outstanding at the time of disbursement of the loan, for processing PPP loans in the following amounts:

- i. For loans of not more than \$50,000, an amount equal to the lesser of fifty (50) percent or \$2,500;
- ii. Five (5) percent for loans of more than \$50,000 and not more than \$350,000;
- iii. Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- iv. One (1) percent for loans of at least \$2,000,000.

SBA will pay the fee not later than 5 days after the reported disbursement of the PPP loan and, as required by the Economic Aid Act, may not require the fee to be repaid by the lender unless the lender is found guilty of an act of fraud in connection with the PPP loan.

6. *Can PPP loans be sold into the secondary market?*<sup>101</sup>

Yes. A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.

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<sup>100</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.3.d. (April 15, 2020) and has been modified to conform to section 340 of the Economic Aid Act.

<sup>101</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.4.d (April 15, 2020) and modified to reflect that advance purchases are not available.

7. *Do the requirements for loan pledges under 13 CFR 120.434 apply to PPP loans pledged for borrowings from a Federal Reserve Bank (FRB) or advances by a Federal Home Loan Bank (FHLB)?<sup>102</sup>*

No. Pursuant to SBA regulations at 13 CFR 120.435(d) and (e), a pledge of 7(a) loans to a FRB or FHLB does not require SBA's prior written consent or notice to SBA. SBA, in consultation with Treasury, has determined that for purposes of loans made under the PPP, the additional requirements set forth in 120.434 shall also not apply. This would mean, for example, that SBA would not have to approve loan documents or require a multi-party agreement among SBA, the lender, and others.

8. *Are lenders required to use a promissory note provided by SBA or may they use their own?<sup>103</sup>*

Lenders may use their own promissory note or an SBA form of promissory note.

9. *Are lenders required to use a separate SBA Authorization document to issue PPP loans?<sup>104</sup>*

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 (the Lender Application Form—Paycheck Protection Program Loan Guaranty)<sup>105</sup> to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and

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<sup>102</sup> This subsection was originally published at 85 Fed. Reg. 21747, subsection III.3. (April 20, 2020).

<sup>103</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.1.a. (April 28, 2020).

<sup>104</sup> This subsection was originally published at 85 Fed. Reg. 23450, subsection III.1.b. (April 28, 2020) and has been modified to conform to the Economic Aid Act.

<sup>105</sup> 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.

disclosure, that are not inconsistent with section 1102 of the CARES Act and section 7A of the Small Business Act, the PPP Interim Final Rules and guidance, and SBA Form 2484. *See* FAQ 21 (posted April 13, 2020). The decision not to require a separate SBA Authorization in order to ensure that critical PPP loans are disbursed as efficiently as practicable.

*10. By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?*<sup>106</sup>

SBA has made available a specific SBA Form 1502 reporting process through which PPP lenders report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved. The lender must report on SBA Form 1502 whether it has fully disbursed PPP loan proceeds. 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 voluntarily terminated and repaid after disbursement (including if a borrower repays the PPP loan proceeds to conform to the borrower's certification regarding the necessity of the PPP loan request). If the lender has received a processing fee on a loan that was cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repaid the PPP loan proceeds to conform to the borrower's certification regarding the necessity of the PPP loan request), SBA will not require the lender to repay the processing fee unless the lender is found guilty of an act of fraud in connection with the PPP loan. In addition

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<sup>106</sup> This subsection was originally published at 85 Fed. Reg. 26321, subsection III.1.b. (May 4, 2020) and has been modified to conform to the Economic Aid Act and for readability.

to providing ACH credit information to direct payment of the requested processing fee, lenders will be required to confirm 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. A lender must report through either E-Tran 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.

*11. How do lenders report disbursements on PPP loans that are approved for loan increases due to the Economic Aid Act?<sup>107</sup>*

Lenders must submit the SBA Form 1502 information within 20 calendar days after a PPP loan increase is approved following the SBA Form 1502 reporting process. See subsection C.10. for more information.

***D. What Do Both Borrowers and Lenders Need to Know and Do?***

*1. What are the loan terms and conditions?<sup>108</sup>*

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:

- a. The guarantee percentage is 100 percent.
- b. No collateral will be required.
- c. No personal guarantees will be required.

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<sup>107</sup> This subsection was added to conform to the Economic Aid Act.

<sup>108</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.4.a. (April 15, 2020) and modified to conform to the Economic Aid Act.

- d. The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.<sup>109</sup>
- e. All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

2. *Do lenders have to apply the “credit elsewhere test”?*<sup>110</sup>

No. When evaluating an applicant’s eligibility lenders will not be required to apply the “credit elsewhere test” (as set forth in section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636) and SBA regulations at 13 CFR 120.101).

3. *Are there any fee waivers?*<sup>111</sup>

- a. There will be no up-front guarantee fee payable to SBA by the borrower;
- b. There will be no lender’s annual service fee (“on-going guaranty fee”) payable to SBA;
- c. There will be no subsidy recoupment fee; and
- d. There will be no fee payable to SBA for any guarantee sold into the secondary market.

4. *Who pays the fee to an agent who provides assistance in connection with a PPP loan?*<sup>112</sup>

Agent fees may not be paid out of the proceeds of a PPP loan. If a borrower has knowingly retained an agent, such fees will be paid by the borrower. A lender is only

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<sup>109</sup> This subsection (d) was revised to conform to section 339 of the Economic Aid Act. The revision applies to PPP loans made on or after December 27, 2020, but may apply with respect to a PPP loan made before that date upon the mutual agreement of the lender and the borrower.

<sup>110</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.3.e. (April 15, 2020).

<sup>111</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.4.a. (April 15, 2020).

<sup>112</sup> This subsection was originally published at 85 Fed. Reg. 20811, subsection III.4.c. (April 15, 2020) and modified to conform to section 340 of the Economic Aid Act. This revision is effective as if included in the CARES Act and applies to PPP loans made before, on, or after December 27, 2020, including forgiveness of such a loan.



responsible for paying fees to an agent for services for which the lender directly contracts with the agent. 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.

The Act authorizes the Administrator to establish limits on agent fees. The Administrator, in consultation with the Secretary, determined that the agent fee limits set forth above are reasonable based upon the application requirements and the fees that lenders receive for making PPP loans.

5. *Can a borrower take multiple draws from a PPP loan and thereby delay the start of the covered period?*<sup>113</sup>

No. The lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval; for the purposes of this rule, a loan is considered approved when the loan is assigned a loan number by SBA.<sup>114</sup>

Notwithstanding this limitation, 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

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<sup>113</sup> This subsection was originally published at 85 Fed. Reg. 26321, subsection III.1.a. (May 4, 2020), as amended by 85 Fed. Reg. 26321 (June 19, 2020), and has been modified for readability.

<sup>114</sup> 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.

days of loan approval shall be cancelled by the lender. When disbursing 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.

6. *If a partnership received a PPP loan that did not include any compensation for its partners, can the loan amount be increased to include partner compensation?*<sup>115</sup>

Yes. If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership's employees and other eligible operating expenses, but did not include any amount for partner compensation,<sup>116</sup> the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount to include appropriate partner compensation, even if the loan has been fully disbursed and even if the lender's first SBA Form 1502 report to SBA on the PPP loan has already been submitted. In no event can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is \$10 million for an individual borrower or \$20 million for a corporate group. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase. Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds.

As described in subsection B.1.c., partnerships, rather than individual partners, are eligible for a PPP loan. As described in subsection B.4.e., self-employment income of

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<sup>115</sup> This subsection was originally published at 85 Fed. Reg. 29842, subsection III.1.a. (May 19, 2020) and has been revised to conform to sections 312 and 344 of the Economic Aid Act.

<sup>116</sup> A partner in a partnership may not submit a separate PPP loan application as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, on a PPP loan application filed by or on behalf of the partnership.

general active partners could be reported as a payroll cost, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, on a PPP loan application filed by or on behalf of the partnership. For guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners, *see* How to Calculate Maximum Loan Amounts, Question 4 at <https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf> (April 20, 2020).

7. *If a seasonal employer received a PPP loan before December 27, 2020, can the loan amount be increased based on a revised calculation of the maximum loan amount?*<sup>117</sup>

Yes. If a seasonal employer received a PPP loan before December 27, 2020, and such employer would be eligible for a higher maximum loan amount under section 336 of the Economic Aid Act, as described in subsection B.4.c., the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount, even if the loan has been fully disbursed and even if the lender's first SBA Form 1502 report to SBA on the PPP loan has already been submitted. In no event can the increased loan amount exceed the maximum PPP loan amount (\$10 million for an individual borrower or \$20 million for a corporate group). Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase. Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds.

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<sup>117</sup> This subsection was originally published at 85 Fed. Reg. 29842, subsection III.1.b. (May 19, 2020) and has been revised to conform to sections 312 and 336 of the Economic Aid Act.

8. *Which other PPP borrowers can reapply or request an increase in their PPP loan amount?*<sup>118</sup>

The following borrowers can reapply or request an increase in their PPP loan amount:

- a. If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
- b. If a borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved.
- c. If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds. SBA will issue additional guidance on the process to reapply or request a loan increase under subsections D.6, D.7, and D.8.

9. *If a borrower's PPP loan has already been fully disbursed, can the lender make an additional disbursement for the increased loan proceeds?*<sup>119</sup>

Yes. Notwithstanding the requirement set forth in paragraph 1.a. of the interim final rule on disbursements posted on April 28, 2020, i.e., that lenders make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval, if a PPP loan is

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<sup>118</sup> This subsection was added to conform to section 312 of the Economic Aid Act. *See also* recalculation available under subsection B.4.d. above for farmers and ranchers.

<sup>119</sup> This subsection was originally published at 85 Fed. Reg. 29842, subsection III.2.a. (May 19, 2020) and revised to conform to section 312 of the Economic Aid Act.

increased under subsections D.6., D.7., or D.8., the lender may make a single additional disbursement of the increased loan proceeds.

*10. Are recipients of PPP loans entitled to exemptions on the grounds provided in Federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?*<sup>120</sup>

Yes. With respect to any loan or loan forgiveness under the PPP, the nondiscrimination provisions in the applicable SBA regulations incorporate the limitations and exemptions provided in corresponding Federal statutory or regulatory nondiscrimination provisions for sex-specific admissions practices at preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), for sex-specific emergency shelters and coreligionist housing under the Fair Housing Act of 1968 (42 U.S.C. 3601 *et seq.*), and for adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*).

In addition, for purposes of the PPP, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such nonprofit of its activities.

#### ***E. Additional Information***

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<sup>120</sup> This subsection was originally published at 85 Fed. Reg. 27287, section III.1. (May 8, 2020).

All loans guaranteed by the SBA pursuant to the CARES Act and the Economic Aid Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 and bb-3, and SBA regulation at 13 CFR 113.3-1h, which provides that nothing in SBA nondiscrimination regulations shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at [www.sba.gov](http://www.sba.gov).

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

**Compliance with Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).**  
Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule under the Congressional Review Act (5 U.S.C. 804(2)). SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement the Economic Aid Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of OIRA has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register.

Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. Pursuant to section 808(2) of the CRA, SBA finds, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest.

As discussed elsewhere in this interim final rule, the last day to apply for and receive a PPP loan is March 31, 2021. Given the short duration of this program, and the urgent need to issue loans quickly, the Administrator in consultation with the Secretary has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

#### Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate

ambiguity, and reduce burden. The rule has no preemptive effect but does have some retroactive effect consistent with specific applicability provisions of the Economic Aid Act (such provisions are identified in the footnotes).

#### Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

#### Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule requires revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collection (OMB Control Number 3245-0407) as a result of amendments made to the PPP by the Economic Aid Act and implemented in this interim final rule. The revisions will affect the PPP Borrower Application Form (SBA Form 2483), the PPP Lender Application Form (SBA Form 2484), the Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions (SBA Form 3506), and the Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders (SBA Form 3507).

SBA Form 2483 has been revised to add housing cooperatives, section 501(c)(6) organizations, destination marketing organizations, and certain news organizations to the categories of eligible entities; to collect the NAICS code of the applicant; to add additional eligible use of proceeds; and to add or revise the certifications to incorporate the Economic Aid Act amendments. Changes were made to SBA Form 2484 to conform to the changes made to SBA Form 2483. SBA Forms 3506 and 3507 were revised to extend the term through March 31,



2021; restate the way interest rate is calculated; and make clarifying changes for consistency with program requirements.

SBA is developing a process to collect the information necessary for eligible borrowers to reapply or request an increase in their PPP loan amount as described in this interim final rule.

SBA has requested emergency approval of the revisions to this PPP information collection to enable the Agency to resume the reauthorized PPP as quickly as possible. Without such emergency approval, the authority for the program would expire before the procedural steps, including the comment periods generally required by the Paperwork Reduction Act, could be completed.

#### Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for small government jurisdictions with a population of less than 50,000, neither State nor local governments are “small entities.”

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the Federal Register at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the Federal Register at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration’s Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Ac. Ch.1. p.9*. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, section 1114 and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260), section 303.

**Jovita Carranza,**

*Administrator*

**Michael Faulkender,**

*Assistant Secretary for Economic Policy*