

EXHIBIT 11



Paycheck Protection Program
Lender Application Form - Paycheck Protection Program Loan Guaranty

OMB Control No.: 3245-0407
 Expiration Date: 09/30/2020

The purpose of this form is to collect identifying information about the Lender, the Applicant, the loan guaranty request, sources and uses of funds, the proposed structure (which includes pricing and the loan term), and compliance with SBA Loan Program Requirements. This form reflects the data fields that will be collected electronically from lenders; no paper version of this form is required or permitted to be submitted. As used in this application, "Paycheck Protection Program Rule" refers to the rules in effect at the time you submit this application that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Instructions for Lenders

All Paycheck Protection Program (PPP) loans are processed by all Lenders under delegated authority from SBA. This application must be submitted and signed electronically in accordance with program requirements, and the information requested is to be retained in the Lender's loan file.

A. Lender Information			
Lender Name:			Lender Location ID:
Address:	City:	St:	Zip:
Lender Contact:	Ph: () -	Cell or Ext: () -	
Contact Email:	Title:		

B. Applicant Information			
Applicant	Check One: ☐ Sole Proprietor ☐ Partnership ☐ C-Corp ☐ S-Corp ☐ LLC ☐ Independent contractor		
	☐ Eligible self-employed individual ☐ 501(c)(3) nonprofit ☐ 501(c)(19) veterans organization		
	☐ Tribal business (sec. 31(b)(2)(C) of Small Business Act) ☐ Other		
	Applicant Legal Name: _____		
	DBA: _____	Business Tax ID: _____	
	Applicant Address: _____		City, State, Zip: _____
	Applicant Primary Contact: _____		Phone: () -

C. Loan Structure Information							
Amount of Loan Request:	\$	Guarantee %:	100%	Loan Term in # of Months:	24	Payment:	Deferred 6 mos.
Applicant must provide documentation to Lender supporting how the loan amount was calculated in accordance with the Paycheck Protection Program Rule and the CARES Act, and Lender must retain all such supporting documentation in Lender's file.							
Interest Rate:	1%						

D. Loan Amount Information	
Average Monthly Payroll multiplied by 2.5	\$
Refinance of Eligible Economic Injury Disaster Loan, net of Advance (if Applicable; see Paycheck Protection Program Rule)	\$
Total	\$

E. General Eligibility <i>(If the answer is no to either, the loan cannot be approved)</i>	
The Applicant has certified to the Lender that (1) it was in operation on February 15, 2020 and had employees for whom the Applicant paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC, (2) current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant, (3) the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, and (4) the Applicant has not received another Paycheck Protection Program loan.	☐ Yes ☐ No
The Applicant has certified to the Lender that it (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, meets the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.	☐ Yes ☐ No

F. Applicant Certification of Eligibility <i>(If not true, the loan cannot be approved)</i>	
The Applicant has certified to the Lender that the Applicant is eligible under the Paycheck Protection Program Rule.	☐ True

G. Franchise/License/Jobber/Membership or Similar Agreement <i>(If applicable and no, the loan cannot be approved)</i>	
The Applicant has represented to the Lender that it is a franchise that is listed in the SBA's Franchise Directory.	☐ Yes ☐ No

H. Character Determination <i>(If no, the loan cannot be approved)</i>	
The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant is subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or is presently incarcerated, or on probation or parole.	☐ Yes ☐ No
The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant has within the last 5 years, for any felony: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment).	☐ Yes ☐ No
I. Prior Loss to Government/Delinquent Federal Debt <i>(If no, the loan cannot be approved)</i>	
The Applicant has certified to the Lender that neither the Applicant nor any owner (as defined in the Applicant's SBA Form 2483) is presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy.	☐ Yes ☐ No
The Applicant has certified to the Lender that neither the Applicant nor any of its owners, nor any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government.	☐ Yes ☐ No
J. U.S. Employees <i>(If no, the loan cannot be approved)</i>	
The Applicant has certified that the principal place of residence for all employees included in the Applicant's payroll calculation is the United States.	☐ Yes ☐ No
K. Fees <i>(If yes, Lender may not pass any agent fee through to the Applicant or offset or pay the fee with the proceeds of this loan)</i>	
Is the Lender using a third party to assist in the preparation of the loan application or application materials, or to perform other services in connection with this loan?	☐ Yes ☐ No

SBA Certification to Financial Institution under Right to Financial Privacy Act (12 U.S.C. 3401)

By signing SBA Form 2483, Borrower Information Form in connection with this application for an SBA-guaranteed loan, the Applicant certifies that it has read the Statements Required by Law and Executive Orders, which is attached to Form 2483. As such, SBA certifies that it has complied with the applicable provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) and, pursuant to that Act, no further certification is required for subsequent access by SBA to financial records of the Applicant/Borrower during the term of the loan guaranty.

Lender Certification

On behalf of the Lender, I certify that:

- The Lender has complied with the applicable lender obligations set forth in paragraphs 3.b(i)-(iii) of the Paycheck Protection Program Rule.
- The Lender has obtained and reviewed the required application (including documents demonstrating qualifying payroll amounts) of the Applicant and will retain copies of such documents in the Applicant's loan file.

I certify that:

- Neither the undersigned Authorized Lender Official, nor such individual's spouse or children, has a financial interest in the Applicant.

Authorized Lender Official: _____
Signature

Date: _____

Type or Print Name: _____

Title: _____

NOTE: According to the Paperwork Reduction Act, you are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated burden for completing this form, including time for reviewing instructions, gathering data needed, and completing and reviewing the form is 25 minutes per response. Comments or questions on the burden estimates should be sent to U.S. Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Rm. 10202, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

EXHIBIT 12

From: Azba Habib <ahabib@kabbage.com> on behalf of Azba Habib <ahabib@kabbage.com>
Sent: Saturday, April 4, 2020 4:23 PM
To: Charlie Brooks <cbrooks@kabbage.com>
Cc: Sam Taussig <staussig@kabbage.com>; Kristel Adler <kadler@kabbage.com>; Spencer Robinson <srobinson@kabbage.com>; Nipun Goel <ngoel@kabbage.com>; Scott Askins <saskins@kabbage.com>; Elizabeth Maiellaro <emaiellaro@kabbage.com>; Nicole Hill <nhill@kabbage.com>
Subject: Re: PPP - KYB/KYC [Privileged and Confidential]

AMAZING. Thank you!

On Sat, Apr 4, 2020 at 12:05 PM Charlie Brooks <cbrooks@kabbage.com> wrote:
 Azba,

We are writing code today to run KYC/KYB on everyone that completes the SBA application, regardless of whether or not they were an approved funding customer. They will all go through our verification process. For the Funding customers that have already come through (I believe it's roughly 5K), we will write a script to check them and will have that done prior to approving them and getting them to sign loan documents, etc. That way we can ensure that everyone that goes through the withdraw flow for SBA will have been KYC/KYB'd prior to disbursing funds. I will work out with Nicole and team how we can handle those that fail the batch case when we get to that point.

Let me know if you have any other questions.

Thanks,



Charlie Brooks

Program Manager

M: 864-580-8061

www.kabbage.com

Kabbage Inc.

730 Peachtree St. NE

Suite 1100

Atlanta, GA 30308

On Fri, Apr 3, 2020 at 5:58 PM Azba Habib <ahabib@kabbage.com> wrote:

Maybe a recency requirement? So if someone was KYB/KYC'd in the last [insert time period where we have some confidence in our level of KYB/KYC - @Nicole Hill? @Nipun Goel?], then we let them through w/o doing it again. Otherwise, we KYB/KYC them but let them go through flow and leverage the time b/w now and getting a bank partner to do KYC/KYB in the background. We make clear that approval of application and disbursement of funds is contingent on compliance review and approval or something along those lines. I already added a caveat under the eligibility amount on the dashboard (courtesy of the FAQ you sent earlier today) where we can add some compliance contingency language to that effect. Open to other ideas.

 image.png

On Fri, Apr 3, 2020 at 5:50 PM Sam Taussig <staussig@kabbage.com> wrote:
 Azba - what exactly is your proposed solution?

 Kabbage

Sam Taussig

Head of Policy

M: 301-412-9193

www.kabbage.com

Kabbage, Inc.

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Suite 1100

Atlanta, GA 30308

On Fri, Apr 3, 2020 at 2:12 PM Azba Habib <ahabib@kabbage.com> wrote:

PRIVILEGED AND CONFIDENTIAL

Hey Guys,

I'm a bit concerned about us just pushing existing Kabbage Funding customers through the app w/o doing KYB/KYC. I understand existing customers don't have to be re-verified under the IFR if we have a risk-based program. Here are the issues:

1. It's unclear whose **existing customers** they are talking about. Per our PMA with Celtic, customers taking Kabbage Funding loans are Celtic's customers. Not saying we don't have arguments that they are also our customers but it's a bit ambiguous. If deemed to not be our existing customers, then we can't bypass KYB/KYC.

2. The **risk-based language** is typically interpreted to mean we do identity verification refreshes which I don't think we've done. IOWs, there might be folks in our portfolio who have (a) never been KYB/KYC'd or (b) have not been KYB/KYC'd in years. This can have several potentially negative consequences:

- We see a lot of fraud (probably after the \$ has left the door) and have to ultimately take the fraud hit - we could of course go after the SMB but lets not make worse our already precarious litigation situation
- We potentially breach warranties from Stone Ridge and/or any new facilities/warehouses we set up as they are all going to ask this be done in compliance with BSA's customer identification program requirements and will be shocked if folks haven't gone through KYB/KYC at all
- There is suspicious activity on the account and we have to file a QAR/SAR and we have stale or no KYB/KYC information -- that's going to look really bad...

[@Nicole Hill](#) may have additional thoughts.

I would be remiss if I didn't flag this risk. The question is are we willing to take it? We could also get customers onboarded and then run KYB/KYC behind the scenes so we have results prior to disbursement which is going to take a hot min b/c we don't have a bank right now funding these? I don't want to slow our roll but I am concerned this could become a big issue esp if we later discover fraud (which we would have caught if we did KYB/KYC) and lose SBA guarantee on the loans.

--



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EXHIBIT 13



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ARCHIVED NEWS RELEASE 20-30

SBA's Paycheck Protection Program for Small Businesses Affected by the Coronavirus Pandemic Launches

WASHINGTON – The U.S. Small Business Administration Administrator Jovita Carranza today launched the Paycheck Protection Program, a \$349 billion emerg...

Published on April 3, 2020

WASHINGTON – The [U.S. Small Business Administration Administrator Jovita Carranza](#) today launched the Paycheck Protection Program, a \$349 billion emergency loan program created last week with the President's signing of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES). The program provides forgivable loans up to \$10 million to small businesses le...

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financially distressed by the Coronavirus (COVID-19) pandemic. The loans, which will be administered at the local level by a national network of banks and credit unions, are designed to maintain the viability of millions of small businesses struggling to meet payroll and day-to-day operating expenses.

“These loans will bring immediate economic relief and eight weeks of financial certainty to millions of small businesses and their employees,” SBA Administrator Carranza said. “We urge every struggling small business to take advantage of this unprecedented federal resource – their viability is critically important to their employees, their community, and the country.”

The loans, which are 100% backed by SBA, are being provided to small businesses without collateral requirements, personal guarantees, SBA fees, or credit elsewhere tests. Those eligible for the program include small businesses, certain non-profits, veterans’ organizations, self-employed individuals, independent contractors, and other businesses meeting size standards based on their North American Industry Classification System code.

The Paycheck Protection Program’s maximum loan amount is \$10 million with a fixed 1% interest rate and maturity of two years.

The loans are available to cover up to eight weeks of average monthly payroll (based on 2019 figures) plus 25% and payments are deferred for six months (interest does accrue). The SBA will forgive the portion of loan proceeds used for payroll costs and other designated operating expenses for up to eight weeks, provided at least 75% of loan proceeds are used for payroll costs. Eligible expenses for the eight-week forgiveness include:

- Payroll costs (excluding the prorated portion of any compensation above \$100,000 per year for any person. Payroll costs include salary, commissions, tips; certain employee benefits including sick leave and health care premiums, and state and local taxes;
- Mortgage interest (**not** prepayment or principal payments) and rent payments on mortgages and leases in existence after February 15, 2020;
- Utilities such as electricity, gas, water, transportation, phone and internet access for services that began before February 15, 2020; and
- Additional wages paid to tipped employees.

Visit www.SBA.gov/Coronavirus for additional resources about protecting your business, employees and customers.

###

About the U.S. Small Business Administration

The U.S. Small Business Administration makes the American dream of business ownership a reality.

As the only go-to resource and voice for small businesses backed by the strength of the federal government, the SBA empowers entrepreneurs and small business owners with the resources and support they need to start, grow or expand their businesses, or recover from a declared disaster.

It delivers services through an extensive network of SBA field offices and partnerships with public and private organizations. To learn more, visit www.sba.gov.

Media contacts

U.S. Small Business
Administration

✉ Press_Office@sba.gov ✉

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U.S. Small Business Administration

409 3rd St., SW

Washington, DC 20416

800-827-5722 



EXHIBIT 14

As of April 6, 2020

PAYCHECK PROTECTION PROGRAM LOANS

Frequently Asked Questions (FAQs)

The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rule ("PPP Interim Final Rule") ([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,¹ and to the PPP Interim Final Rule and any subsequent rulemaking in effect at the time.

1. **Question:** Paragraph 3.b.iii of the Paycheck Protection Program Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require that the lender replicate every borrower's calculations?

Answer: No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower must attest to the accuracy of those calculations. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. The level of diligence by a lender should be informed by the quality of supporting documents supplied by the borrower. Minimal review of calculations based on a payroll report by a recognized third-party payroll processor, for example, would be reasonable.

If lenders identify errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the error.

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?

Answer: No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-

¹ This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

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based size standard corresponding to its primary industry. Go to www.sba.gov/size for the industry size standards.

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

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

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

Answer: No. In addition to small business concerns, a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable). Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.

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

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

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

Answer: Yes. Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

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6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

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

7. **Question:** The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

Answer: No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

8. **Question:** Do PPP loans cover paid sick leave?

Answer: Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit [here](#).

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

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

10. **Question:** What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

Answer: SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on

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the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

Answer: Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

12. **Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

Answer: Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

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

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

14. **Question:** What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

As of April 6, 2020

Answer: In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

15. **Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

Answer: No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

16. **Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Answer: Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.²

² The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers

As of April 6, 2020

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

Answer: No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

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

Answer: If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

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

remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

EXHIBIT 15

As of April 7, 2020

PAYCHECK PROTECTION PROGRAM LOANS

Frequently Asked Questions (FAQs)

The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rule ("PPP Interim Final Rule") ([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,¹ and to the PPP Interim Final Rule and any subsequent rulemaking in effect at the time.

1. **Question:** Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require the lender to replicate every borrower's calculations?

Answer: No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?

Answer: No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-

¹ This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

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based size standard corresponding to its primary industry. Go to www.sba.gov/size for the industry size standards.

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

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

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

Answer: No. In addition to small business concerns, a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable). Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.

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

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

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

Answer: Yes. Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

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6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

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

7. **Question:** The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

Answer: No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

8. **Question:** Do PPP loans cover paid sick leave?

Answer: Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit [here](#).

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

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

10. **Question:** What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

Answer: SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on

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the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

Answer: Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

12. **Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

Answer: Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

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

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

14. **Question:** What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

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Answer: In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

15. **Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

Answer: No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

16. **Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Answer: Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.²

² The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers

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

Answer: No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

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

Answer: If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

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

remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

EXHIBIT 16

Short Message Report

Conversations: 1	Participants: 2
Total Messages: 62	Date Range: 4/8/2020

Outline of Conversations



DD3G3JC23 - 2020/04/08 62 messages on 4/8/2020 • Nipun Goel <ngoel@kabbage.com> • Spencer Robinson <srobinson@kabbage.com>

Messages in chronological order (times are shown in GMT +00:00)

DD3G3JC23 - 2020/04/08

S **Spencer Robinson <srobinson@kabbage.com>** 4/8/2020, 1:11 AM
hey just finished with kids...do we have apps to go through?

S **Spencer Robinson <srobinson@kabbage.com>** 1:16 AM
...otherwise I'm just looking through docs...

N **Nipun Goel <ngoel@kabbage.com>** 1:22 AM
yeah one sec

S **Spencer Robinson <srobinson@kabbage.com>** 1:27 AM
ummm...i might need you to explain this sheet to me....

N **Nipun Goel <ngoel@kabbage.com>** 2:27 AM
on the phone with sam

N **Nipun Goel <ngoel@kabbage.com>** 2:28 AM
i fully appreciate you likely have zero knowledge of this

N **Nipun Goel <ngoel@kabbage.com>** 2:28 AM
but any idea how to capture total apps reviewed/

S **Spencer Robinson <srobinson@kabbage.com>** 2:28 AM
ha....from what context...

S **Spencer Robinson <srobinson@kabbage.com>** 2:28 AM
"looked at" we could get

N **Nipun Goel <ngoel@kabbage.com>** 2:28 AM
yeah

N **Nipun Goel <ngoel@kabbage.com>** 2:29 AM
i have number "ready to be approved" if ya will

N **Nipun Goel <ngoel@kabbage.com>** 2:29 AM
out of our 400

N **Nipun Goel <ngoel@kabbage.com>** 2:29 AM
but no way of understanding of the 2400ish apps

S **Spencer Robinson <srobinson@kabbage.com>** 2:29 AM
but decisions are basically 0

N **Nipun Goel <ngoel@kabbage.com>** 2:29 AM
how many have been touched or not

S **Spencer Robinson <srobinson@kabbage.com>** 2:29 AM
Kaden would have the touched

S **Spencer Robinson <srobinson@kabbage.com>** 2:29 AM
but that number won't be good

S **Spencer Robinson <srobinson@kabbage.com>** 2:30 AM
shouldn't be something Sam uses

N **Nipun Goel <ngoel@kabbage.com>** 2:40 AM
yep walked them off of that.

N **Nipun Goel <ngoel@kabbage.com>** 2:40 AM
nothing exciting about 40 might get approved!

S **Spencer Robinson <srobinson@kabbage.com>** 2:58 AM
can we use 941's?

N **Nipun Goel <ngoel@kabbage.com>** 2:59 AM
in the absence of w-3?

N **Nipun Goel <ngoel@kabbage.com>** 2:59 AM
itll get ya total wages

S **Spencer Robinson <srobinson@kabbage.com>** 2:59 AM
maybe..still looking

S **Spencer Robinson <srobinson@kabbage.com>** 2:59 AM
never mind

S **Spencer Robinson <srobinson@kabbage.com>** 3:00 AM
found w3 and 940

N **Nipun Goel <ngoel@kabbage.com>** 3:02 AM
hawt damn foot doctors

N **Nipun Goel <ngoel@kabbage.com>** 3:02 AM
making fucking bank

N **Nipun Goel <ngoel@kabbage.com>** 3:02 AM
lolz such egregious lies - 150K vs. 400K over 100K

S **Spencer Robinson <srobinson@kabbage.com>** 3:02 AM
they totally deserve it...feet man...feet

S **Spencer Robinson <srobinson@kabbage.com>** 3:10 AM
so if w3 box1 and 940 box 3 don't match...

S **Spencer Robinson <srobinson@kabbage.com>** 3:10 AM

what do we take?

- S** **Spencer Robinson <srobinson@kabbage.com>** 3:11 AM
w3 box1 seems to be (940 box 3-940 box4)
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:12 AM
this seems contradictory to our formulas
- N** **Nipun Goel <ngoel@kabbage.com>** 3:15 AM
i've been taking w-3 box 1 as total wages
- N** **Nipun Goel <ngoel@kabbage.com>** 3:15 AM
as it's a direct reflection of the w-2's
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:15 AM
cool...just need to make sure our directions are correct
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:16 AM
I'm not sure why they don't match
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:16 AM
logically they should
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:30 AM
so can we confirm that w3-box 1 is net of 940 box 4?
- N** **Nipun Goel <ngoel@kabbage.com>** 3:41 AM
per syed - Yes because W-3 box 1 shouldnt have things like paid family leave, sick leave, etc
- N** **Nipun Goel <ngoel@kabbage.com>** 3:41 AM
lolz
- N** **Nipun Goel <ngoel@kabbage.com>** 3:41 AM
someone uploaded payroll total
- N** **Nipun Goel <ngoel@kabbage.com>** 3:41 AM
1/1/2010 - 12/31/2019
- N** **Nipun Goel <ngoel@kabbage.com>** 3:41 AM
amazing.
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:48 AM
so I've got an account where w3 box1 and 940 box 3 + box 4 are still different...
- S** **Spencer Robinson <srobinson@kabbage.com>** 3:59 AM
i'm worried about our calcs

N Nipun Goel <ngoel@kabbage.com> 4:00 AM
syed taking a look at that one i think

S Spencer Robinson <srobinson@kabbage.com> 4:09 AM


N Nipun Goel <ngoel@kabbage.com> 4:28 AM
so it's unrealistic we get thru all of these tonight...

S Spencer Robinson <srobinson@kabbage.com> 4:28 AM
ya...agreed

S Spencer Robinson <srobinson@kabbage.com> 4:28 AM
I have to start all over

S Spencer Robinson <srobinson@kabbage.com> 4:28 AM
...and I was only through 10

N Nipun Goel <ngoel@kabbage.com> 4:28 AM
oh geezus.

N Nipun Goel <ngoel@kabbage.com> 4:29 AM
i've gotten thru 40 and highlighted ones where we're like materially off from borrower calc

N Nipun Goel <ngoel@kabbage.com> 4:29 AM
i've surprisingly been able to match the 100k overage in most scenarios

S Spencer Robinson <srobinson@kabbage.com> 4:29 AM
i didn't even look at that

N Nipun Goel <ngoel@kabbage.com> 4:32 AM
...and these are the "good ones?"

S Spencer Robinson <srobinson@kabbage.com> 4:32 AM

N Nipun Goel <ngoel@kabbage.com> 4:35 AM
hahahaha - all this makes me think of is you as a huge anthony anderson fan.

N Nipun Goel <ngoel@kabbage.com> 4:35 AM
which is way better than the giphy itself

S Spencer Robinson <srobinson@kabbage.com> 4:35 AM
haha...i do think he's hilarious

EXHIBIT 17



OMB Control Number: 3245-0407
Expiration Date: 10/31/2020

**CARES Act Section 1102 Lender Agreement –
Non-Bank and Non-Insured Depository Institution Lenders**

Kabbage, Inc.

_____ (“Lender”) hereby agrees as a condition and in consideration of authorization by the United States Small Business Administration (“SBA”) and the Department of Treasury for Lender to make Paycheck Protection Program SBA-guaranteed financing available as part of the Coronavirus Aid, Relief, and Economic Securities Act (“CARES Act”) (P.L. 116-136) to eligible recipients, as follows (the “Agreement”):

1. Lender Eligibility Requirements

Depository or non-depository financing providers may be eligible to participate as lenders in the Paycheck Protection Program if they meet the criteria described in the attestations below.

Lender must attest to all of the statements in either Group A or Group B below.

Group A. Lender attests that it:	Initial below
Is a depository or non-depository financing provider; AND	
Originates, maintains, and services business loans or other commercial financial receivables or participation interests; AND	
Has a formal compliance program relating to, e.g., auditing and compliance with applicable laws; AND	
Applies the requirements under the BSA as a federally regulated financial institution, or the BSA requirements of an equivalent federally regulated financial institution; AND	
Has been operating since at least February 15, 2019; AND	
Has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months.	

Group B. Lender attests that it is:	Initial below
A service provider to an insured depository institution; AND	SA
Has a contract to support such institution’s lending activities in accordance with 12 U.S.C. § 1867(c).	SA

Lender Information (Please Provide as Applicable):

Institution Name	Kabbage, Inc.	
Headquarters (City, State)	Atlanta, GA	
IRS Employer Identification No.	23-4438761	
State of Incorporation or Organization	Delaware	
Primary Regulator in State of Incorporation or Organization	n/a; see cover letter	
Primary Contact Name	Azba Habib	
Phone Number	678-805-7765	
E-mail	ahabib@kabbage.com	
Website	www.kabbage.com	
State ID Number Issued by Primary State Regulator	n/a; see cover letter	
Central Index Key (CIK)	n/a; not publicly traded	
Business loans or other commercial financial receivables originated and serviced:		
Originated during the year:	\$ Amount:	Number of Loans
2019	0	0
2018	0	0
2017	0	0
Serviced as of year-end:	\$ Amount:	Number of Loans
2019	Approx. \$2.8B	Approx. 476,000
2018	Approx. \$2.0B	Approx. 328,000
2017	Approx. \$1.5B	Approx. 251,000
Estimated number of small businesses served in past 12 months through a loan, payment, or other financial service customer relationship	Aprox., 103,000	
Explanation (if applicable) of estimated number of small businesses served (500 character max)	From March 2019 to February 2020, 103,000 small businesses received a loan or made a payment on a loan from Celtic Bank through a loan program supported and serviced by Kabbage as an agent and service provider to Celtic Bank	
Is the Lender a certified Community Development Financial Institution?	No	
For service providers to insured depository institutions under 12 U.S.C. § 1867(c), list the top 3 insured depository institutions for which such services are provided (by loan count)		
1.a. Institution Name	Celtic Bank	

1.b. RSSD ID	2998576
2.a. Institution Name	
2.b. RSSD ID	
3.a. Institution Name	
3.b. RSSD ID	
Is Lender subject to an enforcement action by its primary federal regulator that addresses unsafe or unsound lending practices?	n/a; Kabbage does not have a primary federal regulator with respect to its role as a service provider for Celtic Bank. See cover letter for additional details.
For lenders attesting to statements in Group B, within the past three years, has Lender been examined by the Federal Reserve, OCC, or FDIC in connection with Lender's role as a service provider under 12 U.S.C. § 1867(c)?	Yes; while not directly examined, the loan program for which Kabbage acts as a service provider to Celtic Bank has undergone an FDIC examination each year for the past three years and Kabbage's activities as service provider have been within the scope of such examination.
Is Lender presently suspended, debarred, proposed for debarment, or declared ineligible by any federal department or agency?	No
Is Lender presently the subject of any insolvency, bankruptcy or creditor's rights proceedings?	No
Is Lender presently subject to any indictment, or criminal or civil fraud charges brought in any jurisdiction?	No
Additional comments to clarify any information above (750 character max)	Kabbage does not originate loans. It acts as an agent and service provider to Celtic Bank, a federally-insured depository institution, in connection with loans originated by Celtic Bank. Accordingly, Kabbage is subject to regulation and examination by the FDIC, Celtic Bank's primary federal regulator, under 12 U.S.C. § 1867(c), but does not have a primary state regulator. Please see additional information in the accompanying cover letter.

2. Application for Guaranty. This Agreement governs only “covered loans,” duly approved under delegated authority hereafter for guaranty by SBA, that are subject to the Paycheck Protection Program under the CARES Act, section 7(a)(36) of the Small Business Act, any rules that have been issued by SBA implementing the Paycheck Protection Program, or any other applicable Loan Program Requirements, as defined in 13 CFR § 120.10, as amended from time to time (collectively “PPP Loan Program Requirements”).

3. Approval of Guaranty. Lender will process and approve covered loans under delegated authority from SBA. Lender assumes all obligations, responsibilities, and requirements associated with delegated processing of covered loans made under the Paycheck Protection

Program. Any change in the terms or conditions stated in the loan authorization shall be made in accordance with PPP Loan Program Requirements. For purposes of making covered loans to an eligible recipient under the Paycheck Protection Program, Lender is responsible, to the extent set forth in the PPP Loan Program Requirements, for all decisions concerning the eligibility (including size) of a borrower for a covered loan. Lender may issue a covered loan approved under PPP procedures without prior SBA review and approval of the processing and underwriting of the loan by executing a PPP Authorization.

4. Closing and Disbursement of Covered Loans. Lender must close and disburse each covered loan in accordance with the terms and conditions of the PPP Authorization and PPP Loan Program Requirements. Lender must ensure that a note and all other Loan Documents (as defined in this paragraph) and additional documents are properly executed and take such other actions necessary to fulfill the requirements of the Paycheck Protection Program. SBA is entitled, at any time, to examine and obtain copies of all notes, certifications and documentation (herein, collectively, called "Loan Documents"), and all other records held by Lender which relate to covered loans made pursuant to the Paycheck Protection Program.

5. Administration of Covered Loans. Lender will hold the Loan Documents and receive all payments of principal and interest unless Lender is required to transfer or assign the note to SBA or a third party at SBA's direction. Lender must service and liquidate all covered loans made under the Paycheck Protection Program in accordance with PPP Loan Program Requirements. Except when SBA directs otherwise, all servicing actions will be the responsibility of Lender, which must follow accepted standards of loan servicing employed by prudent lenders.

6. Purchase by SBA. By making any written demand that SBA purchase the guaranteed portion of a loan, Lender will be deemed thereby to certify that the covered loan has been made, closed, serviced, and liquidated in compliance with the Paycheck Protection Program and PPP Loan Program Requirements. This Agreement will remain in full force and effect with respect to the covered loan after any purchase.

7. Prohibited Fees. Other than a fixed interest rate of 1.0% on the covered loan, Lender is not permitted to charge or receive any bonus, fee, prepayment penalty, commission or other payment or benefit from a borrower in connection with the making or servicing of any covered loan under the Paycheck Protection Program.

8. Termination.

- A. A Lender's authority to make a covered loan under this Agreement will terminate on July 1, 2020. Either party may also terminate this Agreement upon not less than 10 days written notice by certified mail to the other party. Termination will not affect the guaranty of any covered loan previously authorized by SBA under the Paycheck Protection Program. It is understood and agreed that Lender shall continue to comply with the Paycheck Protection Program and PPP Loan Program Requirements with respect to any covered loan previously authorized by SBA, including but not limited to the servicing and liquidation of such covered loans. Termination by either party will not affect in any way Lender's continuing obligation to comply with this Agreement, the Paycheck Protection Program, and all PPP Loan Program Requirements with respect to any covered loan previously authorized by SBA under this Agreement. If this Agreement is terminated by either Lender or SBA, Lender hereby agrees that SBA may in its sole discretion transfer some or all of the covered loans and/or the

servicing and liquidation of such covered loans and related fees or income to SBA or another entity approved by SBA. If SBA requires the transfer of Lender's covered loans, Lender must cooperate with SBA to transfer responsibility for servicing and liquidating of such covered loans.

- B. The guaranty of any covered loan will be automatically terminated if Lender does not submit to SBA a demand to purchase the guaranty or a request to extend the maturity within one year after the maturity of the note.

9. Assignment. Lender may only assign or transfer its rights and obligations under this Agreement with SBA's prior written consent, which SBA may withhold in its sole discretion.

10. Interpretation of this Agreement.

- A. This Agreement is subject to section 7(a)(36) of the Small Business Act, the Paycheck Protection Program and PPP Loan Program Requirements and will be interpreted and construed subject to, and to give full effect to, the broad scope of SBA's power and authority under the Small Business Act and those requirements. Lender consents and agrees to all rights and remedies available to SBA under the Small Business Act, the Paycheck Protection Program and PPP Loan Program Requirements, as each of those are amended from time to time, and any other applicable law.
- B. To the best of its knowledge, Lender certifies that it is in compliance and will maintain compliance with all applicable requirements of the Paycheck Protection Program and PPP Loan Program Requirements.
- C. Lender understands that SBA's rights and powers under the Small Business Act, the Paycheck Protection Program and PPP Loan Program Requirements are in addition to, and exist independent of, this Agreement, and that nothing in this Agreement may be asserted against SBA under any circumstances to delay or prevent SBA's full exercise of its rights under applicable law.
- D. Lender agrees to hold SBA harmless for any action taken by SBA in enforcing this Agreement, the Small Business Act, the Paycheck Protection Program and PPP Loan Program Requirements against Lender for any covered loan made under this Agreement.
- E. Lender agrees that any modification to this Agreement to be asserted against SBA or any exemption to be claimed from any provision of the Small Business Act, the Paycheck Protection Program, or PPP Loan Program Requirements is invalid, null, and void unless it is made in writing by an official of SBA authorized to grant such modification or exemption and was made after full disclosure to SBA of all material facts and circumstances.
- F. This Agreement is to be interpreted under and construed in accordance with federal law.
- G. This Agreement will inure to the benefit of, and be binding upon, the Lender's authorized successors and assigns.
- H. Lender understands that its execution and transmission to SBA of this Agreement does not grant automatic enrollment in the Paycheck Protection Program. SBA and the Department of

Treasury will evaluate Lender and this Agreement in accordance with the PPP Loan Program Requirements and determine whether Lender has the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. SBA and the Department of Treasury may request additional information from Lender before making a determination.

By signing below, I hereby certify that I have the authority to execute this Agreement for the Lender on whose behalf I am signing, and that all representations made are true and correct to the best of my knowledge. I further acknowledge that on behalf of the Lender I have also submitted an Incumbency Certificate attached hereto. I further acknowledge that on behalf of the Lender I have also submitted Lender's most recent fiscal year-end audited financial statements attached hereto. I further acknowledge that any false statements made to the U.S. Small Business Administration and Department of the Treasury can result in criminal prosecution under 18 U.S.C. 1001, 15 U.S.C. 645, and other provisions and imposition of civil money penalties under 31 U.S.C. 3729.

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement.

Kabbage, Inc

Name of Lender

L. Scott Askins

Digitally signed by L. Scott Askins
DN: cn=L. Scott Askins, o=Kabbage, email=askins@kabbage.com, c=US
Date: 2020.04.09 12:49:25 -0400

4/9/20

Signature

Date

L. Scott Askins

Name and Title

ATTEST/WITNESS

I, Azba Habib, hereby represent and warrant that I am a duly elected or appointed Secretary or Officer of Kabbage, Inc. (the "Lender") and that L. Scott Askins is duly authorized and has the legal capacity to execute this Agreement on behalf of the Lender.

Signature:

atl-2121-osx-510.local

Digitally signed by atl-2121-osx-510.local
DN: cn=atl-2121-osx-510.local
Date: 2020.04.09 10:59:25 -0400

Name and Title:

Azba Habib, Assistant Secretary and Assistant General Counsel

Attachment 1: Incumbency Certificate

Attachment 2: Most recent fiscal year-end audited financial statements.

Transmit executed SBA Form 3507 (04-20) and attachments to
NFRLApplicationForPPP@sba.gov.

EXHIBIT 18

#sba-loans

🔗 11 | SBA Loan Flows UX -

6 replies

Last reply 11 months ago

April 12th, 2020 ▾

Paul Bernardini 5:28 PM

More feedback from Twittersphere suggesting we're doubling up on the same data points:
<https://twitter.com/korlando2251/status/1249443040516685825?s=20>

Not That Karen @korlando2251

#TaxTwitter Has anyone been thru the @KabbageInc PPP loan app? Client is telling me its asking for W3 box 1 wages (for wages) PLUS state & local taxes from the W3 boxes 17 & 19. This would result in "doubling up" the EE's SIT & LIT w/h in gross wages???

Twitter · Apr 12th, 2020

Nipun Goel 5:29 PM

-^ @Syed Ashekeen

Syed Ashekeen 5:44 PM

Read through the treasury guidance again. It says Page 2 of 4, what counts as payroll compensation
<https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>
 State and local taxes assessed on compensation - which is why we are counting W-3 box 17 and Box 19
 They included that AFTER saying in line 1 Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee) - Which is W-3 box 1

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Search Kabbage

?

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#sba-loans

🔔 11 | SBA Loan Flows UX -

🔔

Thread

#sba-loans (archived)

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📄

<https://home.t...files/136/PPP%20Bo...rrower%20Information%20Fact%20Sheet.pdf>

April 12th, 2020 ▾

📄

136/PPP%20Bo...rrower%20Information%20Fact%20Sheet.pdf

State and local taxes assessed on compensation - which is why we are counting W-3 box 17 and Box 19

They included that AFTER saying in line 1 Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee) - Which is W-3 box 1

👤

Syed Ashekeen 5:46 PM

Do I disagree with her? No, I think given that I am not a CPA, I am humble enough to think she may be right and maybe it is doubling up (IDK). But, we are following Treasury guidance which includes both of these items

👤

3 replies

Last reply 11 months ago

👤

David McGowan 5:47 PM

more likely treasury running fast and making rules that don't fully make sense. not like we haven't seen that this

👤

Syed Ashekeen Apr 12th, 2020 at 5:46 PM

Do I disagree with her? No, I think given that I am not a CPA, I am humble enough to think she may be right and maybe it is doubling up (IDK). But, we are following Treasury guidance which includes both of these items

3 replies

👤

Spencer Robinson 11 months ago

form instructions do imply she might be right:

👤

Spencer Robinson 11 months ago

Boxes 16 through 19 (not applicable to Forms W-2AS, W-2CM, W-2GU, and W-2VI). Enter the total of state/local wages and income tax shown in their corresponding boxes on the Forms W-2 included with this Form W-3. If the Forms W-2 show amounts from more than one state or locality, report them as one sum in the appropriate box on Form W-3. Verify that the amount reported in each box is an accurate total of the Forms W-2. Federal employers reporting income taxes paid to the CNMI under the 5517 agreement, enter the total of CNMI wages on the Forms W-2 in box 16. Enter the total of income taxes shown on the Forms W-2 paid to the CNMI in box 17. See Federal employers in the CNMI, earlier, for more information.

👤

Spencer Robinson 11 months ago

if it amounts to the sum of W-2 taxes...then this wouldn't be employer paid taxes...but I'm also not a CPA...maybe we should talk to one

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A00185

#sba-loans

🔔 11 SBA Loan Flows UX -

Which is W-3 box 1

April 12th, 2020 ▾

Syed Ashekeen 5:46 PM

Do I disagree with her? No, I think given that I am not a CPA, I am humble enough to think she may be right and maybe it is doubling up (IDK). But, we are following Treasury guidance which includes both of these items

👤 3 replies Last reply 11 months ago

David McGowan 5:47 PM

more likely treasury running fast and making rules that don't fully make sense, not like we haven't seen that this last 2 weeks at all

👍 2 ^ 2 📄 5 😊

we will get some blame for doing this to the letter when what we are getting from the gov a lot of times right now still fully doesn't make sense, then they do their daily press conferences saying it's all good and working perfect. so that's fun from a support standpoint, I'm sorry

April 13th, 2020 ▾

Mike Lopapa 8:39 AM

🔗 <https://www.pymnts.com/disbursements/2020/paypal-approved-to-process-smb-ppp-loans/>

PYMNTS.com

PayPal Approved To Process SMB PPP Loans | PYMNTS.com

PayPal has become one of the first non-bank institutions allowed to distribute loans to

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EXHIBIT 19



Rules and Regulations

Federal Register

Vol. 85, No. 73

Wednesday, April 15, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA-2020-0015]

RIN 3245-AH34

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new product, titled the "Paycheck Protection Program," to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020. This interim final rule outlines the key provisions of SBA's implementation of sections 1102 and 1106 of the Act in formal guidance and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment Date: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by number SBA-2020-0015 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. 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 are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic 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 Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the "Paycheck Protection Program." Section 1106 of the Act provides 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 below.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. The immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a full understanding of loan terms and conditions. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title 1 of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. 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 below. These comments must be submitted on or before May 15, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Temporary New Business Loan Program: Paycheck Protection Program 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 following outlines the key provisions of the PPP.

1. General

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of \$349,000,000,000 to provide guaranteed loans under this new 7(a) program. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. For example, for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 "What are SBA's lending criteria?." 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; remedies for borrower violations 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).

2. What do borrowers need to know and do?

a. Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:

i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or

B. A tax-exempt nonprofit organization described in section

501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

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.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

You must also submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. 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.

SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

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 incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or

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.

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

c. How do I determine if I am ineligible?

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.)

d. I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below.

e. How do I calculate the maximum amount I can borrow?

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

i. Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.

ii. Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

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, less 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

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

f. What qualifies as “payroll costs?”

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 coverage, 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.

g. Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

- 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 an annual salary of \$100,000, prorated as necessary;
- iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, 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 (Pub. L. 116–127).

h. Do independent contractors count as employees for purposes of PPP loan calculations?

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.

i. What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent.

The Administrator, in consultation with the Secretary, determined that a one percent interest rate is appropriate. First, it 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. For example, the FDIC's weekly national average rate for a 24-month CD deposit product for the week of March 30, 2020 is 42 basis points for non-jumbo and 44 basis points for jumbo (<https://www.fdic.gov/regulations/resources/rates/>). Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. For example, the yield on the Treasury two-year note is approximately 23 basis points. This higher yield combined with the fact that the loans are 100 percent guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP.

j. What will be the maturity date on a PPP loan?

The maturity is two years. While the Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness (described below), the Administrator, in consultation with the Secretary, determined that a two year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the two year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.

k. Can I apply for more than one PPP loan?

No. The Administrator, in consultation with the Secretary, determined that no eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP

loan you should consider applying for the maximum amount. While the Act does not expressly provide that each eligible borrower may only receive one PPP loan, the Administrator has determined, in consultation with the Secretary, that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan. This limitation will also help advance Congress' goal of keeping workers paid and employed across the United States.

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

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

m. Is the PPP “first-come, first-served?”

Yes.

n. When will I have to begin paying principal and interest on my PPP loan?

You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment. The Act authorizes the Administrator to defer loan payments for up to one year. The Administrator determined, in consultation with the Secretary, that a six-month deferment period is appropriate in light of the modest interest rate (one percent) on PPP loans and the loan forgiveness provisions contained in the Act.

o. Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and

any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks/2.5 months = 56 days/76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

p. Do independent contractors count as employees for purposes of PPP loan forgiveness?

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.

q. What forms do I need and how do I submit an application?

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application 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.

r. How can PPP loans be used?

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

- i. payroll costs (as defined in the Act and in 2.f.);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and 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; and/or

vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

However, at least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, 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. As with the similar limitation on the forgiveness amount explained earlier, the Administrator, in consultation with the Secretary, has determined that 75 percent is an appropriate percentage that will align this element of the program with the loan amount, 75 percent of which is equivalent to eight weeks of payroll. 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.

s. What happens if PPP loan funds are misused?

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.

t. What certifications need to be made?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below:¹

i. The applicant was in operation on February 15, 2020 and 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 mortgage interest payments, lease payments, and utility payments; I 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 25 percent of loan proceeds may be used for non-payroll costs.

iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

vii. 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.

¹ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also 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.

3. What do lenders need to know and do?

a. Who is eligible to make PPP loans?

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

ii. 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 up to \$349 billion by June 30, 2020, 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 June 30, 2020 deadline.

iii. 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 (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 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, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, or 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.

iv. Qualified institutions described in 3.a.iii.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.

b. What do lenders have to do in terms of loan underwriting?

Each lender shall:

i. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;

ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;

iii. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and

iv. 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 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. 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, 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 Application Form." Borrowers must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. 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.

c. Can lenders rely on borrower documentation for loan forgiveness?

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

consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

d. What fees will lenders be paid?

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

- i. Five (5) percent for loans of not more than \$350,000;
- ii. Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- iii. One (1) percent for loans of at least \$2,000,000.

e. Do lenders have to apply the "credit elsewhere test"?

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

4. What do both borrowers and lenders need to know and do?

a. What are the loan terms and conditions?

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

- i. The guarantee percentage is 100 percent.
- ii. No collateral will be required.
- iii. No personal guarantees will be required.
- iv. The interest rate will be 100 basis points or one percent.
- v. 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.

b. Are there any fee waivers?

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

c. Who pays the fee to an agent who assists a borrower?

Agent fees will be paid by the lender out of the fees the lender receives from

SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. 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:

- i. One (1) percent for loans of not more than \$350,000;
- ii. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- iii. 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.

d. Can PPP loans be sold into the secondary market?

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

e. Can SBA purchase some or all of the loan in advance?

Yes. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight week period after loan disbursement. At least 75 percent of the expected forgiveness amount shall be for payroll costs, as provided in 2.o. To submit a PPP loan or pool of PPP loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report shall include: the Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application; the Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation; a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; any information obtained from the

borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable. The Administrator, in consultation with the Secretary, determined that seven weeks is the minimum period of time necessary for a lender to reasonably determine the expected forgiveness amount for a PPP loan or pool of PPP loans, since the PPP is a new program and the likelihood that many borrowers will be new clients of the lender. The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans. The Administrator will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.

5. Additional Information

All loans guaranteed by the SBA pursuant to the CARES 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 intends to promptly issue additional guidance with regard to religious liberty protections under this program.

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

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

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

E.O. 12866 and E.O. 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. 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 Sections 1102 and 1106 of the CARES 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.

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 or retroactive effect.

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 will impose recordkeeping or reporting requirements under the Paperwork Reduction Act (“PRA”). SBA has obtained emergency approval under OMB Control Number 3245–0407 for the information collection (IC) required to implement the program described above. This IC consists of Form 2483 (Paycheck Protection Program Application Form), SBA Form 2484 (Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty), and SBA Form 3506 (CARES Act

Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). The collection is approved for use until September 30, 2020.

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 such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not 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 Act*. Ch.1. p.9. Accordingly, 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, Public Law 116–136, Section 1114.

Jovita Carranza,
Administrator.

[FR Doc. 2020–07672 Filed 4–10–20; 4:15 pm]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. SBA–2020–0019]

RIN 3245–AH35

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the U.S. Small Business Administration (SBA) is publishing an interim final rule (the Initial Rule) announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). This interim final rule supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules applicable to SBA’s implementation of sections 1102 and 1106 of the Act and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

EXHIBIT 20

As of April 23, 2020

PAYCHECK PROTECTION PROGRAM LOANS

Frequently Asked Questions (FAQs)

The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rule ("PPP Interim Final Rule") ([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,¹ and to the PPP Interim Final Rule and any subsequent rulemaking in effect at the time.

1. **Question:** Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require the lender to replicate every borrower's calculations?

Answer: No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.²

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?

Answer: No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-

¹ This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

² Question 1 published April 3, 2020.

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based size standard corresponding to its primary industry. Go to www.sba.gov/size for the industry size standards.

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

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

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

Answer: No. In addition to small business concerns, a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable). Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.

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

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

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

Answer: Yes. Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

As of April 23, 2020

6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

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

7. **Question:** The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

Answer: No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

8. **Question:** Do PPP loans cover paid sick leave?

Answer: Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit [here](#).

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

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

10. **Question:** What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

Answer: SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on

As of April 23, 2020

the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

Answer: Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

12. **Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

Answer: Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

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

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

14. **Question:** What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

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Answer: In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

15. **Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

Answer: No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

16. **Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Answer: Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.³

³ The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers

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

Answer: No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

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

Answer: If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to BSA compliance.⁴

19. **Question:** Do lenders have to use a promissory note provided by SBA or may they use their own?

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

20. **Question:** The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?

Answer: The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.⁵

21. **Question:** Do lenders need a separate SBA Authorization document to issue PPP loans?

Answer: 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

remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

⁴ Questions 2 – 18 published April 6, 2020.

⁵ Questions 19 – 20 published April 8, 2020.

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Lender Application Form for the Paycheck Protection Program)⁶ 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 disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rule and guidance, and SBA Form 2484.

22. **Question:** I am a non-bank lender that meets all applicable criteria of the PPP Interim Final Rule. Will I be automatically enrolled as a PPP lender? What criteria will SBA and the Treasury Department use to assess whether to approve my application to participate as a PPP lender?

Answer: We encourage lenders that are not currently 7(a) lenders to apply in order to increase the scope of PPP lending options and the speed with which PPP loans can be disbursed to help small businesses across America. We recognize that financial technology solutions can promote efficiency and financial inclusion in implementing the PPP. Applicants should submit SBA Form 3507 and the relevant attachments to NFRApplicationForPPP@sba.gov. Submission of the SBA Form 3507 does not result in automatic enrollment in the PPP. SBA and the Treasury Department will evaluate each application from a non-bank or non-insured depository institution lender and determine whether the applicant has the necessary qualifications to process, close, disburse, and service PPP loans made with SBA's guarantee. SBA may request additional information from the applicant before making a determination.

23. **Question:** How do the \$10 million cap and affiliation rules work for franchises?

Answer: If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on PPP loans is a limit per franchisee entity, and each franchisee is limited to one PPP loan.

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

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

Answer: Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a PPP loan.

⁶ 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.

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In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one loan. The following examples illustrate how these principles apply.

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

- Company X may apply for a PPP loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

Example 2. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate PPP loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a PPP loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a PPP loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards," as explained in FAQ #2.

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

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Answer:

For lenders with existing customers: With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information. Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to Bank Secrecy Act (BSA) compliance.

For lenders with new customers: For new customers, the lender's collection of the following information from all natural persons with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information: owner name, title, ownership %, TIN, address, and date of birth. If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity. If you have questions about requirements related to beneficial ownership, go to <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>. Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender's risk-based approach to BSA compliance.⁷

26. **Question:** SBA regulations require approval by SBA's Standards of Conduct Committee (SCC) for SBA Assistance, other than disaster assistance, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest is: a current SBA employee; a Member of Congress; an appointed official or employee of the legislative or judicial branch; a member or employee of an SBA Advisory Council or SCORE volunteer; or a household member of any of the preceding individuals. Do these entities need the approval of the SCC in order to be eligible for a PPP loan?

Answer: The SCC has authorized a blanket approval for PPP loans to such entities so that further action by the SCC is not necessary in the PPP program.

27. **Question:** SBA regulations require a written statement of no objection by the pertinent Department or military service before it provides any SBA Assistance, other than disaster loans, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest, or if a household member of any of the preceding individuals, is an employee of another Government Department or Agency having a grade of at least GS-13 or its equivalent. Does this requirement apply to PPP loans?

⁷ Questions 21 – 25 published April 13, 2020.

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Answer: No. The SCC has determined that a written statement of no objection is not required from another Government Department or Agency for PPP loans.

28. **Question:** Is a lender permitted to submit a PPP loan application to SBA through E-Tran before the lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs?

Answer: No. Before a lender submits a PPP loan through E-Tran, the lender must have collected the information and certifications contained in the Borrower Application Form and the lender must have fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the PPP Interim Final Rule. Please refer to the Interim Final Rule and FAQ 1 for more information on the lender's responsibility regarding confirmation of payroll costs.

Lenders who did not understand that these steps are required before submission to E-Tran need not withdraw applications submitted to E-Tran before April 14, 2020, but must fulfill lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.⁸

29. **Question:** Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?

Answer: Yes. All PPP lenders may accept scanned copies of signed loan applications and documents containing the information and certifications required by SBA Form 2483 and the promissory note used for the PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

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

This guidance does not supersede signature requirements imposed by other applicable law, including by the lender's primary federal regulator.⁹

30. **Question:** Can a lender sell a PPP loan into the secondary market?

Answer: Yes. A PPP loan may be sold into the secondary market at any time after the loan is fully disbursed. A secondary market sale of a PPP loan does not require SBA approval. A PPP loan sold into the secondary market is 100% SBA guaranteed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.¹⁰

⁸ Questions 26 – 28 published April 14, 2020.

⁹ Question 29 published April 15, 2020.

¹⁰ Question 30 published April 17, 2020.

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31. **Question:** Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

Answer: In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.¹¹

¹¹ Question 31 published April 23, 2020.