**Paycheck Protection Program Interim Final Rule Summary**

Temporarily permits SBA to guarantee 100 percent of 7(a) loans made under the Payment Protection Program under section 7(a) of the Small Business Act, dispensing with the 30-day delayed effective date provided in the Administrative Procedure Act.

Applicants will submit SBA Form 2483, and borrowers will submit SBA Form 2484.

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.

Treasury will still accept public comment on the rule, due 30 days from the date of publication in the Federal Register (FR).

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 new interest rate for loans will now be 1%.

The following outlines the key provisions of the PPP.

**General**

Congress authorized a program level of $349,000,000,000 to provide guaranteed loans under this new 7(a) program.

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.

**Eligibility**

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

* You are a small business concern as defined in section 3 of the Small Business Act (15 USC 632), and subject to SBA’s affiliation rules under 13 CFR 121.301(f) unless specifically waived by the CARES Act;
* You are a tax-exempt nonprofit described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(9) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act; and
* You were in operation on February 15, 2020 and either had salaried employees and payroll taxes or paid independent contractors as reported on a 1099-MISC.

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

You must submit documentation such as payroll records, payroll tax filings, 1099s, bank records qualifying payroll amount to establish eligibility.

**Ineligibility**

You are ineligible if:

* You are engaged in any federally, state, or locally illegal activity;
* You are a household employer (nannies or housekeepers);
* An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole, presently subject to indictment, criminal information, arraignment, or other means by which criminal charges are brought in any jurisdiction, or have been convicted of a felony within the last five years; or
* You have ever obtained a direct or guaranteed loan from SBA or another federal agency that is currently delinquent or in default within the last seven years.

Employees are not eligible because they are not businesses.

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/sop50-10-5-lender-development-company-loan-programs>

**How much can an eligible applicant borrow?**

Maximum loan amount is the lesser of $10 million or an amount that you will calculate using a payroll-based formula specified in the CARES Act:

* Step 1: Aggregate payroll costs from the last twelve months for employees residing in the United States
* 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/sole proprietor in excess of the same amount
* Step 3: Calculate average monthly payroll costs
* Step 4: Multiply the average monthly payroll costs by 2.5
* Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any advance under an EIDL COVID-19 loan

\*Payroll costs consist of compensation to employees in the form of salary, wages, commissions, or similar compensation; cash tips; payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings or similar compensation.

Exclusions from payroll cost include:

* Any compensation of an employee whose principal residence is outside the United States;
* Compensation of an individual employee in excess of $100,000 annual salary;
* Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020;
* Qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act (PL 116-127).

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.

**Interest Rate**

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.

Third, the interest rate is higher than the yield on Treasury securities of comparable maturity.

**Maturity Date**

The maturity is two years.

While the CARES Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness, the 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 recommence business operations and pay off any outstanding balances on their PPP loans.

**Miscellaneous**

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

PPP is first-come, first-served.

You will not have to make any interest payments on your PPP loan for six months following the date of disbursement of the loan. However, interest will accrue on PPP loans during this six-month deferment.

The CARES Act authorizes the Administrator to defer loan payments for up to one year.

**Loan Forgiveness**

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 nonpayroll costs.

SBA will issue additional guidance on loan forgiveness.

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.

**Application**

Applicants must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation as described above.

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 documents in its files.

**PPP Loans Can Be Used For…**

* Payroll costs as defined by the CARES Act (at least 75 percent must be used for payroll);
* Costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
* Mortgage interest payments (but not prepayments or principal payments);
* Rent payments;
* Utility payments;
* Interest payments on any other debt obligations incurred before February 15, 2020; and/or
* Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020
	+ If you received an SBA EIDL loan during that window, you can apply for a PPP loan;
	+ If your EIDL loan was not used for payroll costs, it does 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.

**Misuse of PPP Loans**

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts.

If you do so knowingly, you will be subject to additional liability such as charges for fraud.

If one of your shareholders, members, or partners does so, SBA will have recourse against the individual for unauthorized use.

**Certification**

An authorized representative of the applicant must certify in good faith to all the below:

* 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 1099-MISC.
* Current economic uncertainty makes this loan request necessary to support ongoing operations of the applicant.
* Funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.
* Understanding that if the funds are knowingly used for unauthorized purposes, the federal government may hold the representative of the applicant legally liable as such for charges of fraud.
* Documentation verifying the number of full-time equivalent employees on payroll as well as dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following the loan will be provided to the lender.
* Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities.
* 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.
* Information provided in the application and information provided in all supporting documents and forms is true and accurate in all material aspects.
* Knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law.
* Lender will confirm the eligible loan amount using tax documents submitted which are identical to those submitted to the Internal Revenue Service (IRS).

**What Lenders Need to Know**

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

The CARES 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 PPP loans made with the SBA guarantee.

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 regulator that addresses unsafe or unsound lending practices:

* Any federally insured depository institution or any federally insured credit union;
* 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
* 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.

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.

**Underwriting Requirements**

Each lender is required to:

* Confirm receipt of borrower certifications contained in the PPP Application form;
* Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
* 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
* Follow applicable Bank Secrecy Act (BSA) requirements.

**Fees for Lenders**

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

* Five percent for loans of not more than $350,000;
* Three percent for loans greater than $350,000 and less than $2,000,000; and
* One percent for loans of at least $2,000,000.

**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:

* Guarantee percentage is 100 percent;
* No collateral required;
* No personal guarantees required;
* Interest rate will be 100 basis points or one percent;
* All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds.

**Fee Waivers**

There will be no up-front guarantee fee payable to SBA by the borrower

There will be no lender’s annual service fee (“ongoing guaranty fee”) payable to SBA

There will be no subsidy recoupment fee

There will be no fee payable to SBA for any guarantee sold into the secondary market

**Agent Fees**

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:

* One percent for loans up to $350,000;
* 0.50 percent for loans greater than $350,000 and less than $2 million; and
* 0.25 percent for loans of $2 million or greater.

**Secondary Market for PPP Loans**

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 discount to par value

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

**SBA Purchase of Loans**

A lender may request that 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.

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:

* Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application;
* Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation;
* 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.

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>