

# CBIZ COVID-19 Q&A

## CORONAVIRUS DISASTER RELIEF (Updated 05/15/2020)

Following are the basic tenets of the recently passed Coronavirus Phase 2 and Phase 3 stimulus bill, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act). The Families First Coronavirus Response Act (FFCRA) Phase 2 legislation focuses on sick and family leave, additional unemployment benefits, and offsetting payroll tax credits. The CARES Act provides up to \$350 billion in relief for small businesses.

The CARES Act was passed on Friday, March 27, 2020, and the following is our understanding of the facts and situation based on the information released so far. The FAQ is geared towards SBA loans and other benefits for small businesses. The current environment is fluid and evolving, so some of the details below could change as the government sheds more light on the applicable provisions. We will continue providing updates as they arrive. State and local governments are also stepping in to help businesses, please let us know if you have any questions regarding that.

Lastly, if you believe you may even qualify for any of these loan arrangements, apply as soon as possible to get in line. We expect delays to increase as more and more businesses apply for the loans. Also, the larger the amount of loan that you need, the less likely it will be funded within the next few weeks. Reach out to your current lender or bank and see if they can process any of the SBA loan applications for you. If they cannot process your application or if you need to make contact with a bank or lender, let us know. CBIZ has many trusted relationships with lenders and banks and is happy to introduce you to them to speed up the application process. Due to the KYC rules, there may be a delay as a new bank or lender processes your application.

## IMPORTANT DETAILS

The SBA already had two major types of loan assistance to small businesses: the 7(a) Loan Program and the 504 Loan Program. 7(a) loans are applied for through commercial banks, while the 504 Loan Program is handled directly by the SBA. Under the CARES Act, 7(a) loans are available in amounts of up to \$10,000,000 for many types of small businesses. Currently, the 7(a) loans are on hold through June as the Paycheck Protection Plan loans (discussed below) are using the traditional 7(a) application process.

Recent legislation also expanded current disaster relief loans, also known as Economic Injury Disaster Loans (EIDLs), to provide relief for the coronavirus pandemic. See below for further details regarding EIDLs.

The CARES Act also has created Paycheck Protection Plan (PPP) loans. PPP loans allow you to maintain your payroll expenses. These loans can be forgiven if you meet certain requirements such as maintaining payroll for 8 weeks or employing by June 30 the same number of the full-time equivalent workers you employed on the date of the loan.



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Lastly, be aware that though there are many benefits in the three phases of the stimulus bill, there is a degree of interaction. For example, obtaining the PPP loan may disqualify you from other provisions of the stimulus bill.

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- 57. How will the SBA review borrowers' required good-faith certification concerning the necessity of their loan request?**
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## **FREQUENTLY ASKED QUESTIONS**

### **1. Where and how do I apply?**

For the coronavirus EIDLs, the application is completed through an online portal.

However, currently only agricultural businesses are able to apply. If you had already applied and are a non-agricultural business, the SBA will process your application on a first come first serve basis. Agricultural businesses may apply at:

<https://covid19relief.sba.gov/> You can apply for the Payment Protection Plan (PPP) loans through the traditional 7(a) loan process. This means you should reach out to your lender or bank.

### **2. What is the application process?**

Your bank or lender will have details on the application process for the new PPP loans.

For EIDLs, please see above for the online portal where agricultural businesses can submit their application. Once you have completed the EIDL application online through the portal, an SBA representative will then review your credit history and the economic injury suffered by the business to determine the amount of the EIDL. Note that EIDLs may be adjusted after closing if the borrower's circumstances change (e.g., increased for unexpected costs or reduced due to insurance proceeds).

### **3. What are the specific qualification requirements for PPPs and EIDLs?**



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While your bank will have details on the qualification requirements for PPP loans, there are specific requirements to qualify for this Economic Injury Disaster Loan (EIDL), both of the following requirements must be met:

- A disaster declaration must have been issued for the area in which the business is located; and
- The business must have incurred economic injury as a result of such disaster. EIDL borrowers are required to:
  - ☐ Have a credit history acceptable to the SBA; and
  - ☐ Show the ability to repay all loans.

*All US states have been declared as a disaster area due to the virus.*

#### **4. What are the specific loan terms for Payment Protection Plan (PPP) loans?**

Note that the deadline to apply for this loan is June 30th, 2020. Unlike traditional SBA 7(a) loans, no personal guarantee will be required to receive funds and no collateral needs to be pledged. Similarly, the requirement that a business show that it cannot obtain credit elsewhere has been waived.

Instead of these requirements, borrowers must certify that the loan is necessary due to the uncertainty of current economic conditions; that they will use the funds to retain workers, maintain payroll, or make lease, mortgage, and utility payments; and that they are not receiving duplicative funds for the same uses.

Also, payments of principal, interest, and fees will be deferred for 6 months. The interest rate will be capped at 1.0%. The SBA will not collect any yearly or







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guarantee fees for the loan, and all prepayment penalties are waived. The loan needs to be forgiven or fully paid by the end of 2 years. The SBA has no recourse against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose.

### **5. How soon can I apply?**

For PPP loans, Businesses, sole proprietorships, self-employed individuals and independent contractors can apply immediately. The Regulations are still being put in place for PPP loans, but a copy of the application form is available at

<https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

However, if interested, reach out to your bank regarding 7(a) loan and the PPP loan application process as soon as possible.

For EIDL's, agricultural businesses can apply immediately at

<https://covid19relief.sba.gov/>

### **6. How much loan assistance is available under the stimulus bill for EIDLs and PPP loans?**

For the EIDL, up to \$2,000,000 was available in disaster relief because of the coronavirus, however the SBA has recently capped the loan amount at \$150,000. The SBA will work directly with state Governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by the Coronavirus (COVID-19). The SBA's Economic Injury Disaster Loan (EIDL) program provides small businesses with working capital loans of up to \$150,000 that can provide vital economic



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support to small businesses to help overcome the temporary loss of revenue they are experiencing.

Also, this loan is a low-interest loan to businesses, renters, and homeowners located in regions affected by federally declared disasters. However, for purposes of this loan, small business owners in all US states and territories are currently eligible as all states and territories are federally affected regions.

Lastly, borrowers may receive up to a \$10,000 emergency advance when applying for an EIDL grant. Essentially, borrowers can receive \$1,000 per employee, up to the maximum of \$10,000. If the application is denied, the borrower is not required to repay the \$10,000 advance. The emergency advance can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses.

For PPPs, the maximum loan amount can reach up to \$10 million.

## **7. Can I apply for the \$150,000 EIDL Program and also PPP loans?**

Yes, you can apply for assistance through the \$150,000 EIDL loan and PPP loans.

However, each loan cannot be used for the same purpose. For example, if your EIDL loan is not used for payroll costs, that will not affect your eligibility for the PPP loan.

Also, if you received an EIDL related to COVID-19 between January 31, 2020 and April 3, 2020, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes. This will include situations where the EIDL was used for payroll costs, in which case the EIDL must be refinanced into the PPP.



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At the same time, you cannot take out both an EIDL and a PPP for the same purpose.

Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an emergency EIDL grant award of up to \$10,000 mentioned in Question 6 above, that amount would be subtracted from the amount forgiven under PPP.

**8. If any of the loan applications are approved, when will funding be disbursed?**

Congress's intent is to get the PPP loan proceeds in the borrowers hand as soon as possible. However, it is anticipated that it will take 3 to 4 weeks, if not more. Your bank will have more details on timing as the pandemic continues and more applications are submitted.

The Small Business Administration has stated that review of applications for the coronavirus related EIDLs will take approximately five days. If approved, disbursement of funds will occur three weeks after approval. Importantly, as the number of applicants increases, the timeline before funding is released will likely increase to more than three to four weeks.

The SBA also advises to make sure you have all the documentation necessary on the loan checklist, such as tax returns and financial information, before starting the application.

Small businesses need to be able to show that the loans will be used for working capital to pay current expenses, including payroll, rent, mortgage, accounts payable and utilities, i.e. overhead for the business. The disaster loan cannot be used for the purpose of replacing anticipated sales that were lost.





**9. What are the terms for the forgiveness of the loan (when/how is the loan forgiven)?**

PPP loans are potentially 100% forgiven if you meet the requirements for forgiveness, discussed in Question 21 further below. However, any amount forgiven would be reduced based on a formula to account for any reduction in employees or compensation during a specified period.

An important caveat is that 75% of the loan proceeds must be used for payroll costs.

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 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. Further, 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. The employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.

**10. What are the primary terms (rate, amortization period) for both loans?**

For EIDLs, the current interest rate for small businesses is 3.75% and 2.75% for non-profits. Long-term repayment plans are available for up to 30 years to ensure loan





payments are kept affordable. Terms are determined based on each borrower's ability to repay on a case-by-case basis.

If your PPP loan does not qualify for 100% forgiveness, there can be a maximum interest rate of 1.0% for the remaining balance. The maximum term is 2 years, but you may be able to defer payment for 6 months, prior to the 2 year maturity.

### **11. Will this loan be subordinate to my primary loans (i.e. take a second position on collateral)?**

We are awaiting further guidance on this subject. Generally SBA loans are subordinate to primary loans. Further, the PPP loan requires no collateral security for the SBA.

However, there may be exceptions and it is also important to review the contractual terms to determine the level of subordination for your SBA loan.

Also, it is possible to discharge (eliminate) your obligation to pay back an SBA loan.

However, any assets that were pledged as collateral for the loan will still have a lien even if bankruptcy occurs.

For loans through the 7(a) Loan Program, other than the PPP, loans which exceed \$25,000 must be secured to the extent possible. SBA will not decline a loan if you don't have enough collateral, but will ask for whatever collateral is available which may include real estate owned by a business' principals. The SBA's loan programs usually do not have the loans as highest priority.





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## **12. What is the current underwriting process, i.e., who will make the credit decision**

**(bank loan committee, SBA officer, etc.)?**

The banking institution through which you apply for the PPP loan will have details on the specific underwriting process. Note that traditional bank SBA lenders have underwriting and approval authority from the SBA. The CARES Act also further grants these banks this authority without the SBA potentially revisiting the decision to grant the loan and thus “second guess” the bank, thereby giving them more flexibility and an accelerated time to grant the loan.

For EIDLs, see Question 2 above: an SBA representative will determine the amount of the EIDL based on the application.

## **13. What other considerations do I need to make?**

Whether applying for EIDLs or PPPs, ensure you have all of your financial documents to smooth out and hopefully speed up the application process.

There is a potential deferral of up to 12 months on the EIDLs and 6 months on the PPPs disbursed because of the coronavirus pandemic. Ensure that your financials are current, apply for the \$150,000 EIDL relief or amount of PPP relief, and apply for a deferral request as soon as possible. See Question 17 further below for documents you should consider having on hand if you are going to apply for any of the loans.



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#### **14. What is the payroll tax holiday?**

The payroll tax holiday allows employers to defer the employer portion of their social security payroll tax liability (i.e., 6.2% of wages), including an identical amount of self-employment tax for the self-employed, for the period:

- Beginning March 27, 2020, and
- Ending December 31, 2020

Businesses taking advantage of this holiday must repay 50% of the amount deferred by the end of 2021, and the remaining 50% by the end of 2022. The employee portion of social security taxes remains due and must be withheld (as well as any other portion of the self-employment tax for the self-employed).

Importantly, this benefit is available even if you have a PPP loan and the loan is forgiven. Employers who have received a PPP loan, but whose loan has not yet been forgiven, may defer deposit and payment of the employer's share of social security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of social security tax due after that date. However, the amount of the deposit and payment of the employer's share of social security tax that was deferred





through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates" to be treated as timely (and avoid a failure to deposit penalty):

- On December 31, 2021, 50 percent of the deferred amount; and
- On December 31, 2022, the remaining amount.

### **15. What type of benefit is there to retaining employees?**

There is also a new payroll tax credit applying to retention of employees. The refundable credit is against the employer component of employment tax (Social Security and Railroad Retirement) equal to 50% of “qualified wages” paid by an “affected employer”. The credit covers employee wages paid after March 12, 2020 and through and including December 31, 2020.

Importantly, employers are *generally* not eligible for the credit if they are also receiving a loan under the SBA Paycheck Protection Program (PPP) under 7(a) (note that this applies regardless of whether the loan is ultimately forgiven). The exception is you can qualify for the retention credit so long as you pay your PPP loan back by May 14, 2020 (The SBA has extended this date to May 18, 2020).

Lastly, this applies in terms of the aggregation rules as well: an employer that is treated as a single employer under the aggregation rules, may not receive the Employee Retention Credit if any member of the employer's aggregated group receives a PPP loan.

For more information on the aggregation rules, see the following link:

<https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-which-entities-are-considered-a-single-employer-under-the-aggregation-rules-faqs>







Qualified wages do not include those paid under the paid sick or paid family leave

programs of the Phase 2 legislation, and are defined as follows:

- For small employers (100 or fewer full full-time employees), an amount equal to the first \$10,000 of all compensation paid to the employee during the quarter for which operations were suspended or in which the company had a significant decline in gross receipts,
- For large employers, an amount equal to the first \$10,000 of compensation, including healthcare benefits, paid to employees who are not working due to a coronavirus shutdown order

Eligible employers include any employer carrying on a trade or business during the 2020 tax-year whose business operations are fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or group meetings due to the COVID-19 pandemic, and employers with gross receipts that are less than 50 percent of their gross receipts for the same quarter in the prior year. In the latter case, the credit terminates when gross receipts exceed 80 percent of their gross receipts for the same calendar quarter in the prior year.

Businesses are precluded from obtaining both the retention credit under the CARES Act and either a “Work Opportunity Tax Credit” under Internal Revenue Code (IRC) Section 51 or an “Employer Credit for Paid Family and Medical Leave” under IRC Section 45S. Businesses can take both the Employee Retention Credit and the FFCRA credit. See Question 29 below for further details about the FFCRA credit.





## **16. How is the payroll credit calculated and what are its benefits?**

The credit is a dollar for dollar tax offset against payroll taxes including withheld federal income taxes, employee share of FICA taxes, and employer's share of FICA taxes for all employees. Employers are able to retain the amounts otherwise due from March 27, 2020 December 31, 2020, making access to the cash immediate. Instructions for reporting will be made available by the IRS soon. If a refund is owed, employers can get an expedited advance from the IRS by submitting a streamlined claim form that will be released shortly.

The IRS has stated they will try to process these forms within two weeks or less.

An employer is entitled to defer deposit and payment of the employer's share of social security tax prior to determining whether the employer is entitled to the paid leave credits under FFCRA or the employee retention credit under the CARES Act, and prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits. Importantly, this benefit is available even if a company has a PPP loan forgiven, with some important caveats. See Question 14, above.

## **17. What forms are available to apply for the PPP loans?**

The application form is available at: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>. Guidance is still being issued regarding the PPP loans and we will provide updates accordingly.





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Here is a list of items we suggest clients gather as soon as possible, along with actively reaching out to their banking relationships:

- SBA Form 1919 or corresponding SBA Form 912, if applicable
- Articles of Incorporation/Organization of each borrowing entity
- By Laws/Operating Agreement of each borrowing entity
- Driver's Licenses of all owners
- Payroll Expense verification documents to include:
  - IRS Form 941 and 944,
  - Payroll Summary Report with corresponding bank statement,
  - If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement, and,
  - Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.)
- 1099s (if Independent Contractor)
- Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States.
- Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
- Most recent Mortgage Statement or Rent Statement (Lease)
- Most recent Utility Bills (Electric, Gas, Telephone, Internet, Water, etc.)



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**18. Are international employees eligible? What about contractors working for my business?**

See Questions 22 and 44 below, employees must be living within the United States. Contractors working for your business are not counted for your payroll expense as they are able to apply for a PPP loan on their own.

**19. When can I expect funding to occur for an EIDL loan and PPP forgivable loan?**

We are expecting four weeks, but that is changing on a daily basis. Keep in mind, the emergency loan program was increased from \$350,000 to \$1,000,000. So, if you are in a cash crunch situation, talk to your bank and you should be able to obtain \$1M in 10 days. We have never seen that, but the bank processing your loan application should be able to give you more certainty on that process.

**20. I own multiple companies (Real estate LLC, Operating company, Employee company, etc.), which company should apply for which loan?**

Once again, the bank will be able to direct you through this process as well. The CARES Act is really only focused on the operating portions of the business and it does provide affiliation rules, see Question 31 further below.

**21. How is the PPP loan amount calculated?**

Generally, the loan amount will be determined by multiplying 2.5 times the average monthly payroll costs incurred during the 1-year period before the date on which the loan is made plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of \$10 million.





For borrowers under the Paycheck Protection Program (PPP), the loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- Payroll costs (not to exceed \$100,000 of annualized compensation per employee). The \$100,000 cap applies only to cash compensation and the cap does not apply to the following types of non-cash compensation: non-cash benefits such as employer contributions to retirement plans, payment for employee benefits of group health care coverage including premiums, and payment of state and local taxes assessed on compensation; and
- Payments of interest on any mortgage loan incurred prior to February 15, 2020 (note that language in the CARES statute also includes interest on ordinary course company indebtedness with security on “personal property”. It is expected this will be clarified for the banks granting these loans. In either case, the forgiven amount may not include principal repayments of either mortgages or loans); and
- Payment of rent on any lease in force prior to February 15, 2020; and
- Payment on any utility for which service began before February 15, 2020.

It is important to mention that the amount forgiven is not considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee’s prior year compensation (any employee whose annualized compensation for any pay period exceeds \$100,000 is not counted). A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired or replaced by June 30, 2020.





Any amount outstanding after considering the amount forgiven will be repayable by the maturity date of 2 years from the loan issuance.

Following is an example where some employees make more than \$100,000: The overall annual payroll: \$1,500,000

Compensation amounts in excess of an annual salary of \$100,000: \$300,000

Subtract these excess compensation amounts from overall payroll:  $\$1,500,000 - \$300,000 = \$1,200,000$  Average monthly qualifying payroll:  $\$1,200,000 / 12 = \$100,000$

Multiply by 2.5 = \$250,000

The maximum loan amount is \$250,000.

**22. What type of expenses are included in the monthly average that is multiplied by 2.5 to determine the amount of the forgivable loan? I've heard of Health insurance, the Employer portion of FICA taxes, Employer 401(k) matches, 1099 Contractor expenses, Part-time employees, etc.**

“Payroll costs” include:

- payments for salary, wage, commission, or similar compensation, including FUTA; Importantly, if an employee left before working for 12 months in 2019, their payroll cost must still be calculated based of what would have been their annual salary.
- payments for cash tip or equivalent,
- payments for vacation, parental, family, medical, or sick leave;
- allowance for dismissal or separation;
- payment required for the provisions of group health care benefits;
- payment of any retirement benefit such as the employer 401(k) match;
- housing stipend or allowance provided to an employee as part of compensation;
- payment of state or local tax assessed on the compensation of employees, this includes SUTA;





- Compensation to or income of a sole proprietor/contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation up to \$100k for 1 year (prorated for covered period). This refers to the net income of the sole proprietor / contractor, not the costs incurred by the sole proprietor /contractor payment.
- See Question 38 for special details regarding payments to partners;

“Payroll costs” do not include:

- the compensation of an individual employee in excess of an annual salary of \$100,000, as pro-rated for the covered period;
- taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code (i.e., FICA, RRTA, and federal income tax withholdings); compensation of an employee whose principal place of residence is outside of the United States; and
- qualified sick leave wages or qualified family leave wages for which a credit is already allowed under the Families First Coronavirus Response Act
- A special note is for payroll costs of payments of any compensation to or income of a sole proprietor or independent contractor. Employers cannot include these payments in their payroll cost. However, independent contractors are able to apply for a PPP loan on their own and therefore will include contractor payments in their application. This means that just like employees, their payroll expense can include amounts of up to \$100,000 in 1 year, as prorated for the covered period.





**23. Does the stimulus bill account for LLC owner guaranteed payments and K-1 SE income?**

Currently, we believe such payments and income will be lendable and forgivable to the amount of \$100,000 for up to two months, so \$15,385. However, partners must apply for a PPP loan on their own, the guaranteed payments cannot be included in the payroll costs of the employer. Also, see Questions 59 and 60 further below for important details for partners and partnerships applying for these loans.

**24. What 12 month period is used to determine the number of employees and payroll costs to calculate the amount of the maximum loan in Question 4 above?**

For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. Applicants can also use the previous 12 months leading up to the loan origination date.

For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee.

For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

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).

**25. For determining the target headcount to be maintained per the forgivable loan terms, how is the target headcount number determined? Is it headcount on date of application, date of loan closing, average headcount, etc.? How do part time employees get treated in the calculation?**

Please see Question 21 above and Question 26 below. Target headcount will look at two periods. The first period is the 8 week period starting on the loan origination date. The second period can be either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020. There are special rules if you are a new business or a seasonal business.

**26. How will headcount be calculated during the 8 week "measurement period", to determine if my company maintained headcount to maximize the loan forgiveness? How do part time employees and 1099 contractors affect this calculation?**

Please see Question 21 above. The calculation for loan forgiveness will look for reductions in headcount and salary reductions during the periods outlined in Question 25 above. Headcount is defined as the number of full-time equivalent (FTE) employees employed during the periods and not necessarily whether the employee is full-time, part-time, or temporary. An FTE is an employee who is working at least 30 hours per week.

Importantly, an FTE can be multiple employees added together. For example, if you have two employees and each is working 15 hours a week, then you have one FTE. If you reduce FTEs or reduce overall salary by more than 25%, you must rehire the FTEs as well as increase salary as necessary by June 30, 2020.





**27. Is there a deferral period for loan payments required on the forgivable loan? Is it the same for EIDLs?**

Payments are deferred for six to twelve months on the EIDLs, but only for six months on PPP loan amounts that were not forgiven.

**28. Are all banks equally ready to handle the 7(a) applications?**

No, you will have to check with your bank to see if they can handle these applications. We have a list available of trusted banks that process the 7(a) and other Stimulus bill related loans. Ultimately, loans are made by SBA-approved lenders that have the delegated authority to make the loans without requiring approval from the SBA (SBA Authorization is not required for each individual loan). This should help expedite the application and closing process.

**29. Does my business qualify for the Families First Coronavirus Response Act (FFCRA)?**

Importantly, an employer may receive both this paid family and medical leave credit as well as the employee retention credit, but not for the same wage payments.

The FFCRA requires private employers with fewer than 500 employees to provide paid sick leave and family leave for certain COVID-19 related absences. The 500 employee rule is subject to FMLA integrated employer regulations and distinct aggregation rules.

The FFCRA includes payroll tax benefits to help offset the cost associated with these employee benefits.





Employers covered by FFCRA will be allowed a credit against the Social Security tax for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid per employed individual per day.

The credit amount is generally limited to 10 days in total per individual and capped at

- i) The individual's compensation up to \$511 per day for an individual who is subject to a Federal, State, or local quarantine or isolation order due to COVID-19 or seeking a medical diagnosis for COVID-19 symptoms, and

Two-thirds of the individual's compensation up to \$200 per day for an employee caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions. The amount of this credit is increased by the amount of tax imposed by the Medicare tax on qualified sick leave wages.

- ii) The second component of the program mandates paid family leave for an additional 10 weeks (i.e., 50 business days) to employees who are unable to work because they must care for a child under the age of 18 affected by a school or daycare closure on account of coronavirus. The first 2 weeks of such benefits are to be provided as paid sick leave, as previously discussed.

Employers covered by FFCRA will also be allowed a credit against the payroll tax imposed for each calendar quarter in an amount equal to 100 percent of the qualified emergency family leave wages paid per employed individual per day. This amount is generally capped at two-thirds of the individual's compensation up to \$200 per day per





individual and \$10,000 in total for all calendar quarters. The amount of this credit is increased by the amount of Medicare tax on qualified family leave wages.

### **30. What are additional considerations for obtaining benefits under the Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act?**

The DOL explains that being “unable” to work or telework means that an employer has work available, but one of the specified paid reasons for leave under the FFCRA prevents the employee from being able to do so. If an employer offers the ability to work the same number of hours per day but different hours, the employee is able to work and leave is unnecessary unless:

- The reason for leave prevents the employee from working that schedule;
- The employee has a qualifying paid sick leave absence; or
- The employee cannot telework due to the need to care for a child. Note, however, that if an employee can telework while caring for the child, leave is unavailable.

The DOL provides generally that employees and employers may agree to intermittent and incremental use of emergency paid sick leave (EPSL) and emergency paid Family and Medical Leave benefits (FMLA+), but then seems to divide the remaining guidance into two situations—whether the employee is teleworking, or working onsite.

For employees who are teleworking, whether taking time off under EPSL or FMLA+, employer and employee may agree to intermittent leave for any of the covered reasons. But for employees who are working on the employer’s premises, intermittent EPSL is only permitted for employees who are taking leave for school closures or childcare





unavailability (again, only if the employer agrees). Employees taking EPSL for one of the other five reasons under the Act must take such leave in full-day increments (because the intent of the FFCRA is to prevent employees who may be ill or caring for those who are ill from possibly spreading the virus to other individuals in the workplace).

Per the DOL, if the worksite closes, employees do not receive, or continue to receive, FFCRA leave. It does not matter whether:

- The closure occurs before or after the law takes effect;
- An employee is on leave when closure occurs;
- An employer furloughs an employee;
- The worksite temporarily closes and the employer says it will reopen in the future.

This is true whether the worksite closes for lack of business or per a federal, state, or local directive. If this occurs, an employee's only recourse is to seek unemployment benefits. For further details, please reach out to your employee benefits service provider and/or payroll service provider.

### **31. How are affiliates treated for these loans?**

Per an SBA update, see Question 55 further below if foreign affiliates are involved.

Generally, entity “affiliates” are combined for purposes of determining the number of employees. For PPP Loans, SBA regulations on entity affiliations are waived for:

- Accommodation and food services businesses with 500 or fewer employees;





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- Franchise businesses that are approved on the SBA's Franchise Directory; and
- Any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act.

Affiliation rules for SBA purposes can be intricate. We highly advise reaching out to your legal counsel regarding these rules. The SBA has published a list of the affiliation rules relating to PPP loans and importantly, the rule is not as simple as having more than 50% ownership between entities.

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). Again, we advise reaching out to legal counsel in regards to the affiliation rules.

### **32. Can I choose what my 8 week period will be for loan forgiveness? What if my 8 week period ends after June 30, 2020?**

The 8 week period for calculating forgiveness begins on the date that the lender first disburses funds to you. Generally, this date must begin no later than 10 calendar days from the date of the loan being approved.

Yes, even if your 8 week period goes beyond June 30, 2020, that will still be the 8 week period that will be used to calculate the amount of your loan forgiveness.



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### **33. Can my business qualify even if I have over 500 employees?**

Small businesses 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-based size standard corresponding to its primary industry. Go to [www.sba.gov/size](http://www.sba.gov/size) for the industry size standards.

Additionally, a business can qualify for a PPP loan if it meets both tests in the SBA’s “alternative size standard” as of March 27, 2020:

- maximum tangible net worth of the business is not more than \$15 million;  
and
- 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.

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



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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.

**34. Do PPP loans cover paid sick leave?**

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 the Families First Coronavirus Response Act.

**35. Does the entire amount of the PPP loan become unforgivable if more than 25% of it is used for non-payroll expenses?**

No, you can use more than 25% of the PPP loan for qualified expenses. However, this will reduce the amount of the loan that will be forgivable. Currently, the SBA has not provided forgiveness guidance, and it is possible this rule could potentially change. .

**36. I am an S-corp owner and have always paid myself little to no salary, can I apply for the PPP loan? What if I run a Schedule C business?**

So long as you have payroll costs and meet the definition of a small business, you should be able to qualify for a PPP loan. However, at least 75% of the loan must be used for payroll costs to qualify for forgiveness.

For a Schedule C, up to \$100,000 of the income should qualify as payroll costs, in addition to compensation paid.

**37. How will I treat the forgiven portion of the loan on my tax return? What about expenses I paid with the forgiven portion of the loan?**

We expect, based on current guidance and GAAP, that the forgiven portion of the loan will be adjusted into APIC or other income.







While the IRS has stated that the expenses will not be deductible on the tax return, Congress may potentially alter this outcome. However, currently the IRS's position stands and the expenses will be nondeductible. We will update you if this position changes.

**38. I am a general and active partner in the partnership, do I have to apply for the PPP on my own?**

No, as you are a partner in a partnership, you cannot submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. In addition, you should be aware that participation in the PPP may affect your eligibility for state administered unemployment compensation or unemployment assistance programs, including the Employee Retention Credits.

Also, see Questions 60 and 61 further below, where partnerships that applied before the guidance in Question 38 was released will have their loans increased to cover partner compensation in accordance with that guidance. This way, the partnership can maximize the amount of loan it could have applied for.

**39. How do I calculate the maximum amount I can borrow and what documentation is required?**

How you calculate your maximum loan amount depends upon whether or not you employ other individuals.

If you have no employees, the following methodology should be used to calculate your maximum loan amount:





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

Regardless of whether you have filed a 2019 tax return with the IRS, you must provide the 2019 Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

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

- i. Step 1: Compute 2019 payroll by adding the following:





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- a. Your 2019 Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value), up to \$100,000 annualized, if this amount is over \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero;
  - b. 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of \$100,000 annualized and any amounts paid to any employee whose principal place of residence is outside the United States (see Question 44) ; and
  - c. 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).
- ii. Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).
  - iii. Step 3: Multiply the average monthly amount from Step 2 by 2.5.



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

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

#### **40. I am self-employed and file a Schedule C, how can I use the PPP loan proceeds?**

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

- i. Owner compensation replacement, calculated based on 2019 net profit as described in Question 39 step 1 above.
- ii. Employee payroll costs for employees whose principal place of residence is in the United States, if you have employees.
- iii. Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments



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(e.g., the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle).

You must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C for them to be a permissible use during the eight-week period following the first disbursement of the loan (the “covered period”). For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 Form 1040 Schedule C, you cannot use the proceeds for utilities during the covered period.

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

iv. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP’s maturity of two years). 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.



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#### **41. What portion of the loan proceeds are eligible for forgiveness?**

The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount spent over the covered period on:

- i. payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (for eight weeks, a maximum of \$15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);
- ii. owner compensation replacement, calculated based on 2019 net profit as described in Question 39 step 1 above. Forgiveness of such amounts is limited to eight weeks' worth (8/52) of 2019 net profit, but excluding any qualified sick leave equivalent amount for which a credit is claimed under the Families First Coronavirus Response Act (FFCRA) or qualified family leave equivalent amount for which a credit is claimed under FFCRA;
- iii. payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business mortgage payments);
- iv. rent payments on lease agreements in force before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business rent payments); and





v. utility payments under service agreements dated before February 15, 2020 to the extent they are deductible on Form 1040 Schedule C (business utility payments).

**42. What type of documentation will I need to submit to my lender with the request for loan forgiveness?**

In addition to the borrower certification, if you have employees, you should submit Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions). Whether or not you have employees, you must submit evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period if you used loan proceeds for those purposes.

The 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the eight-week covered period.

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

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. 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 (extended to May 18, 2020) will be deemed by SBA to have made the required certification in good faith.

**44. What guidance is there to determine if an employee’s principal place of residence is in the United States?**

PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121- 1(b)(2)) when determining whether an individual employee’s principal place of residence is in the United States. We advise discussing this issue with your legal counsel.

**45. Are agricultural producers, farmers, and ranchers eligible for PPP loans?**

Yes. Agricultural producers, farmers, and ranchers are eligible for PPP loans if:

- (i) the business has 500 or fewer employees, or
- (ii) the business fits within the revenue-based sized standard, which is average annual receipts of \$1 million. Additionally, agricultural producers, farmers, and ranchers







can qualify for PPP loans as a small business concern if their business meets

SBA's "alternative size standard."

As of May 13, 2020 "alternative size standard" is currently:

- (1) maximum net worth of the business is not more than \$15 million, and
- (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. For all of these criteria, the applicant must include its affiliates in its calculations. Following is a link to the applicable affiliation rules for the PPP:

<https://www.sba.gov/document/support--affiliation-rules-paycheck-protection-program>

#### **46. Are agricultural and other forms of cooperatives eligible to receive PPP loans?**

As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.

#### **47. To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must an employer count all employees or only full-time equivalent employees?**

For purposes of loan eligibility, the CARES Act defines the term employee to include "individuals employed on a full-time, part-time, or other basis." An employer must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold.





For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees. By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “fulltime equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

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

See response to Question 43 above.

**49. Section 1102 of the CARES Act provides that PPP loans are available only to applicants that were “in operation on February 15, 2020.” Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?**

Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership. In addition, where there is a change in ownership effectuated through a purchase of substantially all assets of a business that was in operation on February 15, the business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the acquiring business was not in operation until after February 15, 2020.





If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application, except where the pre-sale business had applied for and received a PPP loan. The Administrator, in consultation with the Secretary, has determined that the requirement that a business “was in operation on February 15, 2020” should be applied based on the economic realities of the business’s operations.

#### **50. Will the SBA review individual PPP loan files?**

Answer: Yes. The has SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application.

Additional guidance implementing this procedure will be forthcoming. The outcome of SBA’s review of loan files will not affect SBA’s guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020) and further explained in FAQ #1.15 40.





**51. Will the PPP loan forgiveness amount (pursuant to the CARES Act and SBA's implementing rules and guidance) be reduced if the employer laid off an employee, offered to rehire the same employee, but the employee declined the offer?**

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

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

Yes. The Borrower Application Form requires applicants to certify that "The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program." On April 27, 2020, Treasury issued an interim final rule





allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. An applicant that is otherwise in compliance with applicable SBA requirements, and that complies with Treasury's interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form for the time period for calculating average monthly payroll for seasonal businesses, an applicant may elect to use the time period in Treasury's interim final rule on seasonal workers. 42.

### **53. Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as “nonprofit organizations” under section 1102 of the CARES Act?**

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





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Accordingly, the Administrator will treat a nonprofit hospital exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act if the hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under section 501(a).<sup>16</sup> The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination. This approach helps accomplish the statutory purpose of ensuring that a broad range of borrowers, including entities that are helping to lead the medical response to the ongoing pandemic, can benefit from the loans provided under the PPP.

This determination does not need to account for the ancillary conditions set forth in section 501(r) of the Internal Revenue Code and elsewhere associated with securing the tax exemption under that section. Section 501(r) states that a hospital organization shall not be treated as described in section 501(c)(3) unless it meets certain community health and other requirements. However, section 1102 of the CARES Act defines the term “nonprofit organization” solely by reference to section 501(c)(3), and section 501(r) does not amend section 501(c)(3). Therefore, for purposes of the PPP, the requirements of section 501(r) do not apply to the determination of whether an organization is “described in section 501(c)(3).



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This guidance is solely for purposes of qualification as a “nonprofit organization” under section 1102 of the CARES Act and related purposes of the CARES Act, and does not have any consequences for federal tax law purposes. Nonprofit hospitals should also review all other applicable eligibility criteria, including the Interim Final Rules on Promissory Notes, Authorizations, Affiliation, and Eligibility (April 28, 2020) regarding an important limitation on ownership by state or local governments. 85 FR 23450, 23451.1

**54. SBA guidance reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 7, 2020 (extended to May 18, 2020) will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 (extended to May 18, 2020) repayment date?**

The SBA is extending the repayment date for this safe harbor to May 14, 2020 (This has been extended further to May 18, 2020). Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA’s interim final rule providing the safe harbor. SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020 (This has been extended further to May 18, 2020).





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**55. How do the SBA’s affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?**

For purposes of the PPP’s 500 or fewer employee size standard, an applicant must count all of its employees and the employees of its U.S and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same. We highly recommend discussing the affiliation rules with your legal counsel.

**56. Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020, extended further to May 18, 2020) eligible for the Employee Retention Credit?**

Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020, extended to May 18, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

**57. How will the SBA review borrowers’ required good-faith certification concerning the necessity of their loan request?**

When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury,



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has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the interim final rule on affiliates, 85 FR 20817 (April 15, 2020).

The SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. The SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by the SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form.



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If the SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, the SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness.

If the borrower repays the loan after receiving notification from the SBA, the SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. The SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

**58. An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 (extended to May 18, 2020) will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 (extended to May 18, 2020) repayment date?**

Yes, the SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider Question 57 above. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.





**59. Is there any updated guidance for loans to partners, partnerships, or seasonal employers?**

The SBA has authorized all PPP lenders to increase existing PPP loans to partnerships or seasonal employers to include appropriate amounts to cover partner compensation in accordance with the interim final rule posted on April 14, 2020, or to permit the seasonal employer to calculate its maximum loan amount using the alternative criteria posted at this link: <https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule-disbursements>.

In addition, although the interim final rule on disbursements posted on April 28, 2020, requires PPP loans to be disbursed in a single disbursement, if a PPP loan that is increased has already been disbursed, this interim final rule authorizes the lender to make an additional disbursement of the increased loan proceeds prior to submission of the initial SBA Form 1502 that includes that loan. SBA Form 1502 is required to be submitted within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 22, 2020.

**60. If a partnership received a PPP loan that did not include any compensation for its partners, can the loan amount be increased to include partner compensation?**

Yes. If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership's employees and other eligible operating expenses, but did not include any amount for partner compensation, the lender may electronically





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submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount to include appropriate partner compensation, even if the loan has been fully disbursed, provided that the lender's first SBA Form 1502 report to SBA on the PPP loan has not been submitted.

After the initial SBA Form 1502 report on the PPP loan has been submitted to SBA, or after the date the first SBA Form 1502 was required to be submitted to SBA, the loan cannot be increased. In no event can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is \$10 million for an individual borrower or \$20 million for a corporate group.

Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase. The interim final rule posted on April 14, 2020, describes how partnerships, rather than individual partners are eligible for a PPP loan.

The interim final rule further explained that the self-employment income of general active partners could be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. Guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners was posted on April 24, 2020 (see How to Calculate Maximum Loan Amounts, Question 4 at <https://www.sba.gov/sites/default/files/2020-04/How-toCalculate-Loan-Amounts.pdf>).



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**61. If a seasonal employer received a PPP loan before the alternative criterion for determining the maximum loan amount for seasonal employers became available, can the loan amount be increased based on a revised calculation using the alternative criterion?**

Yes. If a seasonal employer received a PPP loan before the alternative criterion for such employers was posted on April 28, 2020, and would be eligible for a higher maximum loan amount under the alternative criterion, the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount, even if the loan has been fully disbursed, provided that the lender's first SBA Form 1502 report to SBA on the PPP loan has not been submitted.

After the initial SBA Form 1502 report has been submitted to SBA, or after the date the initial SBA Form 1502 report was required to be submitted to SBA, the loan cannot be increased. In no event can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is \$10 million for an individual borrower or \$20 million for a corporate group. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase.

**62. There was no mention of the 75% payroll costs requirement for loan forgiveness in the CARES Act, are there any updates on this requirement?**

Currently, the SBA has not provided any updated guidance that eliminates the 75% rule.

However, the Office of the Inspector General has noted that the loan proceeds eligible for





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forgiveness per the SBA guidance do not fully align with the Act's provisions. The OIG found that the 75% payroll cost requirement could result in an undue burden to the borrowers. The OIG has suggested that the SBA better align the PPP requirements with the provisions of the CARES Act. They suggested the SBA evaluate the potential negative impact to borrowers regarding the specified percentage of loan proceeds eligible for forgiveness and update the requirements, as deemed necessary.

We will update you as soon as there is guidance, if any, from the SBA that updates the 75% requirement.

### **63. Can agricultural businesses apply for the EIDL loans?**

Yes, due to the scale of the economic fallout from the pandemic, the SBA has modified its position and is allowing agricultural businesses to apply for EIDL loans. Traditionally, agricultural businesses were ineligible for EIDL loans. Agricultural businesses include businesses engaged in the legal production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries (*as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b))*). Eligible agricultural businesses must have 500 or fewer employees.

The SBA will begin accepting new EIDL applications on a limited basis only, in order to provide relief to U.S. agricultural businesses. For agricultural businesses that submitted an EIDL loan application through the streamlined application portal prior to the legislative change, SBA will move forward and process these applications without the



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need for re-applying. All other EIDL loan applications that were submitted before the portal stopped accepting new applications on April 15 will be processed on a first-in, first-out basis.

**64. I heard the amount of relief from the EIDL program has been reduced?**

This is correct. Currently, the SBA has reduced the maximum amount of EIDL an employer can obtain from \$2,000,000 to \$150,000. Also, the advance grant has been reduced from an automatic \$10,000 to a grant of only \$1,000 per employee, up to \$10,000.



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