

Bridging the Gap: An Overview of SBA Loans under the Paycheck Protection Program and Emergency Advances of Credit

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In response to the Coronavirus pandemic, the President signed H.R. 748, known as the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act on March 27, 2020. The bill provides more than \$2 trillion of aid to individuals and the public and private sector.

Under the Act, a \$349 billion Paycheck Protection Program (“**PPP**”) seeks to provide short term cash-flow through federally guaranteed loans for small businesses impacted by COVID-19. These loans will be administered by the Small Business Administration (“**SBA**”) through the 7(a) loan program.

Importantly, please note that PPP loans are distinct from the 7(b) SBA economic injury disaster loan (“**EIDL**”) program that is already available to small businesses, nor may such loans be used for the same purpose. Interested borrowers should evaluate both programs and choose the path that most closely addresses their needs.

On April 24, 2020, President Trump signed H.R.266, the [Paycheck Protection Program and Health Care Enhancement Act](#) (the “**PPP/HCE Act**”). The PPP/HCE Act, modifies and increases funding for the PPP and EIDL programs, providing an additional \$310 billion in PPP loan funding guarantees and an additional \$60 billion in EIDL loans and grants, and also will provide funding for hospitals and coronavirus testing.

On June 5, 2020, President Trump signed H.R.7010, the [Paycheck Protection Program Flexibility Act of 2020](#) (the “**PPPFA**”). The PPPFA modifies the PPP to provide additional flexibility to companies in using PPP loan proceeds and obtaining forgiveness for such loan from the SBA.

Below is a high-level summary of the provisions relating to PPP loans under the CARES Act and PPP/HCE Act — including the interim final rule released by the SBA on April 2, 2020 (the “**Initial Rule**”), a subsequent interim final rule on the applicability of certain affiliate rules on April 3, 2020 (the “**Affiliation Rule**”), and additional interim final rules issued since that date (such rules, together with the Initial Rule and the Affiliation Rule, the “**Interim Regulations**”), and guidance on frequently asked questions updated by the SBA as of May 27, 2020 (the “**FAQ Guidance**”) — as well as an option to seek emergency advances pursuant to Section 7(b).¹ We expect the U.S. Department of Treasury and the SBA to provide further guidance and regulations on the legislation in the coming days and weeks. Such guidance and regulations will provide further detail on the administration of PPP loans and may materially change the summary below. Businesses are encouraged to seek advice from qualified legal counsel before applying for a PPP loan.

¹ Given the exigency of the economic crisis, the SBA has determined that the Interim Regulations are effective immediately upon publication in the Federal Register, without the typical 30-day delayed effective date and opportunity for advance public comment. The Interim Regulations have been published in the Federal Register and links to these regulations can be found at the end of this article. The SBA has indicated that it may make additional revisions to the Interim Regulations.

PAYCHECK PROTECTION PROGRAM OVERVIEW

<p>Who is eligible for PPP Loans?</p>	<p>The following entities and persons are eligible to apply for PPP loans from approved lenders (as described below):</p> <ol style="list-style-type: none"> 1. For-profit companies, 501(c)(3) nonprofits, and 501(c)(19) veteran’s organization that: <ol style="list-style-type: none"> a. Employs 500 or fewer employees² (including employees of both U.S. and foreign affiliates³) whose principal place of residence is in the United States; or b. Meets the SBA size standard for their specific industry; 2. Small business concerns⁴ that meet both tests in SBA’s “alternative size standard” as of March 27, 2020: (a) maximum tangible net worth of the business is not more than \$15 million; <u>and</u> (b) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. 3. Businesses with multiple locations, so long as (i) no single location employs more than 500 employees at any physical specific location and (ii) such businesses have a NAICS code beginning with 72 (Accommodation and Food Service); and 4. Sole-proprietors, independent contractors, and self-employed individuals (e.g., those working in the “gig economy”). <p>The requirement to include employees of affiliates is waived for (1) businesses with a NAICS code beginning with 72 (Accommodation and Food Service), (2) businesses operating as certain franchisees on the SBA’s Franchise Directory, and (3) small businesses that receive financing through the Small Business Investment Company (SBIC) program.</p>
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² Under the Act, “**Employees**” includes all persons employed on a full-time, part-time or other basis. In calculating the number of employees for purposes of determining PPP eligibility, borrowers may use their average employment numbers over the same time period used to determine their average monthly payroll. Options: (A) for non-seasonal businesses, either 12-month period preceding loan application or calendar year 2019, (B) for seasonal businesses, the period from February 15, 2019 or March 1, 2019 to June 30, 2019 and (C) for businesses that were not in business for the periods described in (A) or (B), the period from January 1, 2020 to February 29, 2020. 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).

³ The term “**affiliates**” has been broadly construed by the SBA in the past to include more than just equityholders with controlling voting stock. This is a fact-intensive inquiry that should be done in coordination with qualified legal counsel. Note that subsequent regulations may change this traditional interpretation.

⁴ Please note that according to the Affiliation Rule, existing SBA affiliate rules continue to apply to such size standard determinations. Additionally, even if your business meets one of the size standards listed here, we recommend consulting with your counsel to confirm whether your company is otherwise eligible to qualify as a “small business concern” under 15 U.S.C. 632 and applicable SBA regulations.

	<p><i>The FAQ Guidance provides that borrowers must apply the affiliation rules published by the SBA on April 3, 2020. Those rules require a business to include the employees of all its “affiliates” in its own headcount.</i></p> <p><i>The Initial Rule provides that businesses that were traditionally ineligible to apply for SBA Loans pursuant to 13 CFR 120.110 will be similarly excluded from the PPP program (other than 501(c)(3) non-profits, which are expressly permitted to apply).</i></p> <p>Such ineligible businesses include:</p> <ol style="list-style-type: none"> 1. Financial businesses engaged primarily in lending, investment companies, and mortgage companies primarily in the business of making loans; 2. REITs and other passive businesses, 3. Businesses that are majority-owned by individuals <i>other</i> than U.S. citizens or legal permanent residents, 4. Most private clubs, and 5. Businesses primarily involved in gambling, life insurance, or speculation.
<p>Limitation on Loans to Corporate Groups</p>	<p>Businesses that are part of a single corporate group may not receive more than \$20 million of PPP loans in the aggregate. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent. The SBA’s affiliation rules, and any waiver of those rules under the CARES Act, continue to apply independent of this limitation.</p> <p>This limitation applies immediately to any loan that has not yet been fully disbursed as of April 30, 2020. For loans that have only been partially disbursed by that date, this limitation applies to any further disbursement that would cause the total PPP loans to the single corporate group to exceed \$20 million.</p> <p>It is the responsibility of an applicant for or borrower of a PPP loan to (1) notify the lender if such applicant or borrower has already applied for or received PPP loans in excess of \$20 million, and (2) withdraw or request cancellation of any pending PPP loan application or approved PPP loan not in compliance with this limitation. Failure to do so will be regarded as a use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness. A lender may rely on an applicant’s representation concerning compliance with this limitation.</p>
<p>Changes in Ownership</p>	<p>If a business was in operation on February 15, 2020 but underwent a change in ownership thereafter, such business is still eligible for a PPP loan so long as it meets all other eligibility criteria.</p> <p>Where such change in ownership is effectuated through a purchase of substantially all of the assets of a business that was in operation on February 15, 2020, the business acquiring the assets will be eligible to apply for a PPP loan even if (i) the change in ownership results in the assignment of a new tax ID number and (ii) the acquiring business was not in operation until after February 15, 2020.</p> <p>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.</p>

<p style="text-align: center;">Certification of Necessity</p>	<p>To qualify for a PPP loan, borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”</p> <p>To determine that the loan is necessary, borrowers must take into account their current business activity and access to “other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”</p> <p>Although access to other funding sources is not necessarily enough to disqualify a company, the SBA has stated that “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.”</p> <p>Additionally, any borrowers who previously applied for a PPP loan before April 23, 2020 and who, in light of the Recent Guidance, do not feel that their eligibility certification was accurate will nevertheless be deemed to have made such certification in good faith if such loan is repaid in full by May 14, 2020.</p> <p>Lenders may rely upon a borrower’s certification of necessity and have no obligation to confirm the necessity of the loan.</p> <p>An inaccurate certification may not only render a borrower’s loan ineligible for forgiveness, but could also potentially lead to liability under the False Claims Act.</p>
<p style="text-align: center;">Loan Amount</p>	<p>Eligible borrowers are permitted to seek loans for an amount equal to the lesser of:</p> <ol style="list-style-type: none"> 1. 250 percent of the employer’s average monthly payroll costs,⁵ measured over the prior twelve months; or 2. \$10 million.
<p style="text-align: center;">Allowable Usage</p>	<p>To qualify for loan forgiveness, all PPP funds must be spent by the earlier of 24 weeks following the loan disbursement date or December 31, 2020 (the “<i>Covered Period</i>”).⁶</p> <p>During the Covered Period, proceeds from a PPP loan may be used for:</p> <ol style="list-style-type: none"> 1. Payroll costs;

⁵ Payroll costs are generally broadly defined to include (i) salaries, wages, commissions, or similar forms of compensation, (ii) payments for vacation, parental, family, medical or sick leave, (iii) retirement benefits and certain other employee benefits, and (iv) state and local taxes. The following are explicitly excluded from the calculation of payroll: (a) employee compensation in excess of \$100,000 annually (provided, however, this does not apply to non-cash benefits, including (i) employer contributions to defined-benefit or defined-contribution retirement plans; (ii) payment for the provision of employee benefits consisting of group health care coverage; and (iii) payment of state and local taxes assessed on compensation of employees), (b) compensation of foreign employees, (c) FICA, (d) qualified paid sick leave and paid extended family leave for which a tax credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (“**FFCRA**”), (e) income tax withholdings, and (f) payments to independent contractors and sole proprietors.

⁶ The PPPFA extended the Covered Period to 24 weeks from the eight-week period originally established by the Initial Rule.

	<ol style="list-style-type: none"> 2. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; 3. Employee salaries, commissions, or similar compensation; 4. Payments of interest on any mortgage obligation (other than prepayment); 5. Rent payments; 6. Utility payments; and 7. Interest on any other debt obligations that were incurred before February 15, 2020 (though such interest payments would not be eligible for forgiveness). <p>Importantly, based on the PPPFA, at least 60% of the loan amount must be used for payroll costs (reduced from an original requirement of 75% in the Initial Rule).</p>
<p>Loan Forgiveness</p>	<p>Borrowers can apply for loan forgiveness equal to the costs incurred and payments made during the Covered Period on the following (in each case, to the extent that such obligations were in place before February 15, 2020):</p> <ol style="list-style-type: none"> 1. Payroll costs (excluding compensation over \$100,000); 2. Interest on mortgages; and 3. Payments of rent and utilities. <p>Borrowers who take advantage of the extended 24-week Covered Period may still apply for loan forgiveness after eight weeks (using the original eight-week covered period). Borrowers that elect to use the longer 24-week period will need to demonstrate compliance with the requirements to maintain employment levels through the entire 24-week period or to restore wage and full-time equivalent employee levels by December 31, 2020.</p> <p>Importantly, the PPPFA provides that no more than 40% of the loan amount may be used for non-payroll costs (increased from an original cap of 25% in the Initial Rule), in an effort to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll.</p> <p>Further forgiveness for additional wages paid to tipped workers may be available.</p> <p>The amount eligible to be forgiven would be reduced in the event of employee layoffs or pay cuts. Specifically, the forgiveness amount would be reduced by:</p> <ol style="list-style-type: none"> 1. The product of (i) the forgiveness amount and (ii) a percentage equal to (a) the average number of employees per month during the Covered Period⁷ divided by (b) at the election of the borrower, (1) the average number of full-time equivalent employees per month employed from February 15, 2019 to June 30, 2019; or (2) the average number of full-time equivalent employees per month employed from January 1, 2020 until February 29,

⁷ The average number of full-time equivalent employees is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

	<p>2020 (unless the borrower is a seasonal employer, in which case the average number described in (1) will be used); and</p> <p>2. The aggregate amount of reduction in total salary or wages for any employee during the Covered Period that is in excess of 25% of the employee's salary or wages during the most recent full quarter of employment before the Covered Period; <i>provided, however</i>, reductions in pay for employees who have an annualized salary of more than \$100,000 are not considered in this calculation.</p> <p>Importantly, however, the borrower's loan forgiveness will not be reduced for any reduction in employees over the course of the Covered Period as long as the borrower has rehired the same number of employees by December 31, 2020.</p> <p>Additionally, the borrower will not be penalized for failing to rehire employees in either of the following situations:</p> <ul style="list-style-type: none"> • The borrower can document a) an inability to rehire an individual who was an employee on February 15, 2020, and b) an inability to hire a similarly qualified individual for this position by December 31, 2020. • The borrower can document an inability to return to the same level of business activity as at February 15, 2020, due to compliance with federal government requirements relating to sanitation, social distancing or any other COVID-19-related worker or customer safety requirement. <p>In order to qualify for loan forgiveness, eligible borrowers would be required to submit certain documentation and certifications verifying their employment and payroll levels during the loan period. Note that forgiven loan amounts will not be treated as taxable income.</p> <p><i>The SBA will review all loans in excess of \$2 million, as well as other loans where it deems review appropriate, following submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming, but borrowers who have received more than \$2 million in loans should be prepared to answer questions and demonstrate their good faith basis for the necessity of the loans.</i></p>
<p>Loan Maturity</p>	<p>For any loan obtained prior to the enactment of the PPPFA that has a remaining balance after reduction based on the loan forgiveness amount, such loan will be required to be repaid within two years unless the borrower and lender mutually agree to modify the term. For any loan obtained after the enactment of the PPPFA on June 5, 2020, any unforgiveable balance must be repaid within five years.</p>
<p>Maximum Interest Rate; Applicable Fees</p>	<p>The Initial Rule indicates that these loans will have a fixed interest rate of 1%.</p> <p>Based on the PPPFA, all loans will have deferments of principal and interest payments until the time that the SBA compensates the lender for any forgiven amounts, which may constitute an extension of the Initial Rule's deferment period of six months.</p> <p>Importantly, however, repayment may nevertheless be required if a borrower has not applied for forgiveness within 10 months after the end of the Covered Period.</p>

	<p>PPP loans will amortize in a similar fashion as 7(a) loans, which are generally repaid with fixed monthly principal and interest payments over the life of the loan.</p> <p>Both borrower and lender fees are waived.</p> <p>All of the key loan terms will be identical for each borrower (regardless of lender).</p>
No Collateral; Federal Backstop	<p>PPP Loans are unsecured, and do not require a personal guarantee.</p> <p>The loans are 100% backstopped by the federal government for the life of the loan.</p>
Payroll Tax Deferral	<p>The PPPFA allows borrowers to defer payment of the employer share of Social Security payroll taxes for a full year, such that any deferred amounts would be due in two equal payments in December 2021 and December 2022.</p>
Application Timing	<p>According to the Initial Rule:</p> <ol style="list-style-type: none"> 1. Small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders as soon as April 3, 2020; 2. Independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders beginning on April 10, 2020; and 3. Other regulated lenders will be permitted to make PPP loans as soon as they are approved and enrolled in the program. <p>The deadline for applying for PPP loans is June 30, 2020.</p> <p>The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.</p>
Additional Loan Conditions	<p>Business are not required to seek other sources of capital, including equity or debt investments from owners with liquid assets.</p> <p>Instead, borrowers are merely required to certify in good faith that they meet certain requirements of the program, including that: (i) the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; (ii) they will use the funds to retain workers and maintain payroll, lease, and utility payments; and (iii) they are not receiving duplicative funds for the same uses from another SBA program.</p>
Supporting Documents Required for Borrower Applications	<p>According to the Initial Rule, borrowers must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship.</p> <p>For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.</p>

<p>Eligibility of Economic Injury Disaster Loan (EIDL) Borrowers</p>	<p>Borrowers who currently have an EIDL loan related to COVID-19 are eligible to apply for a PPP loan, with an option to refinance the EIDL loan into a PPP loan; <i>provided, however</i>, the emergency EIDL grant award will be subtracted from the amount forgiven under the PPP.</p> <p>Existing EIDL borrowers receiving loans that are <u>not</u> related to COVID-19 are also eligible to apply for PPP, but cannot refinance their EIDL loan into a PPP loan.</p>
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ADDITIONAL CONSIDERATIONS FOR LENDERS CONSIDERING THE PPP PROGRAM

<p>Eligible Lenders</p>	<p>Any SBA-certified lender is permitted to make PPP loans, and the CARES Act streamlines the intake procedures to accelerate timing of the loans.</p> <p>Additionally, the CARES Act grants wide authority for the SBA and the Treasury Department to approve new lenders to make Paycheck Protection Loans. The Initial Rule indicates that any federally insured depository institution, federally insured credit union, and Farm Credit System institution will be automatically entitled to participate upon transmission of a CARES Act Section 1102 Lender Agreement (SBA Form 3506).⁸</p>
<p>PPP/HCE Act Set-Asides for Certain Institutions</p>	<p>The PPP/HCE Act includes an additional \$310 billion for guarantees of PPP loans, \$60 billion of which is set aside for lending by certain institutions, as follows:</p> <ul style="list-style-type: none"> ▪ \$30 billion is reserved for insured depository institutions and credit unions with assets between \$10 and \$50 billion; and ▪ \$30 billion is set aside for community financial institutions, which is defined to include: <ul style="list-style-type: none"> ○ Community development financial institutions (“CDFI”);⁹ ○ Minority depository institutions (“MDI”);¹⁰ ○ Development companies;¹¹ and ○ Intermediaries.¹²

⁸ Lenders that not currently certified with the SBA are required to submit their application to DelegatedAuthority@sba.gov to participate in the program.

⁹ A CDFI is defined as an institution that (i) has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State. 12 U.S.C. § 4702(5)(A). A current directory of CDFIs can be found [here](#).

¹⁰ An MDI is defined as any depository institution that (i) if a privately owned institution, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; (ii) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (iii) in the case of a mutual institution, the majority of the Board of Directors, account holders, and the community which it services is predominantly minority. 12 U.S.C. § 1463 note.

¹¹ A Development Company is defined as an “enterprise incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations.” 15 U.S.C. § 662(6).

¹² An Intermediary is defined as “(i) a private nonprofit entity; (ii) a private, nonprofit community development corporation; (iii) a consortium of private, nonprofit organizations or nonprofit community development corporations; (iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State,

<p style="text-align: center;">Lender Verification Requirements</p>	<p>To streamline processing and incentivize participation in the program, lenders are not required to make an independent determination as to (i) the applicability of affiliation rules to a borrower, (ii) employee headcount of the borrower and its affiliates (if any), or (iii) the accuracy of payroll cost calculations. Rather, lenders are subject to the verification requirements set forth below:</p> <ol style="list-style-type: none"> 1. <u>Affiliation and Headcount</u>. Lenders are permitted to rely on borrowers' certifications as to which entities (if any) are its affiliates, and the headcount of the borrower and its affiliates. 2. <u>Payroll Documentation</u>. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll costs. Lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs. However, if a lender identifies errors in the borrower's calculations or a material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. 3. <u>Beneficial Ownership Information</u>. If a PPP loan is being made to an existing customer, and the lender has already collected, certified or verified beneficial ownership information in accordance with the FinCEN Rule CDD requirements, the lender does not need to re-verify such information. Additionally, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans (except to the extent required by internal BSA compliance policies). <p>According to the Initial Rule, each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Application Form."</p> <p>The lender must collect the information and certifications contained in the Paycheck Protection Application Form and information demonstrating that the borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020, as well as review the borrower's average monthly payroll costs, prior to submitting the PPP loan for processing through SBA's E-Tran system. However, lenders who did not know that these steps are required prior to submission need not withdraw applications submitted before April 14, 2020, but must fulfill these responsibilities for submitted applications as soon as practicable, and no later than loan closing.</p> <p>The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has</p>
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county, municipal government, or any agency thereof, if no application is received from an eligible nonprofit organization or the [SBA] determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or (v) an agency of, or nonprofit entity established by, a Native American Tribal Government, that seeks to borrow or has borrowed funds from the [SBA] to make microloans to small business concerns..." 15 U.S.C. § 636(m)(11)(A).

	<p>accurately verified the payments for eligible costs. The SBA will hold harmless any lender that relies on such borrower documents and attestation from a borrower.</p> <p>Pursuant to the FAQ Guidance, an individual’s signature as an “Authorized Representative of Applicant” is a representation that the signatory is authorized to make the necessary certifications. Lenders may rely on that representation and accept a single individual’s signature on that basis. This signature, as well as all other signatures and consents required for the loan application, may be a wet signature, a scanned copy of a signature or an e-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act.</p>
<p>Reimbursement Mechanics for Forgiven Loans</p>	<p>PPP loans that are forgiven under the CARES Act are considered to be cancelled under Section 7(a) of the SBA and would be treated in accordance with the procedures as loans guaranteed under the SBA.</p> <p>A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan (or pool of PPP loans) at the end of the seventh week of an applicable loan by submitting a report requesting advance purchase.¹³</p> <p>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.</p> <p>The SBA must purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.</p>
<p>How will Lenders be Compensated?</p>	<p>Processing fees will be based on the balance of the financing outstanding at the time of final disbursement:</p> <ol style="list-style-type: none"> 1. Loans \$350,000 and under: 5.00% 2. Loans greater than \$350,000 to \$2 million: 3.00% 3. Loans greater than \$2 million: 1.00% <p>Lenders may not collect any fees from the applicant. Any fees paid to an agent must be paid out of the lenders’ processing fees.</p>

¹³ According to the Initial Rule, the reimbursement request must include: (i) the Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application; (ii) the Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation; (iii) a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; (iv) any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount (with supporting documentation); and (v) any additional information requested by the SBA.

Lender Online Portals	Lenders are permitted to use their own online portals and an electronic form they create to collect information and certifications from the borrower, <i>provided</i> that (i) the form asks for the same information (using the same language) as the Borrower Application Form and (ii) lenders send the data to SBA using SBA’s interface.
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KEY ISSUES FOR SELF-EMPLOYED INDIVIDUALS¹⁴

General Eligibility	<p>Individuals with income from self-employment who file a 2019 Form 1040, Schedule C (“<i>Self-Employed Individuals</i>”) are eligible for a PPP loan if:</p> <ol style="list-style-type: none"> 1. The Self-Employed Individual was in operation on February 15, 2020; 2. The Self-Employed Individual has self-employment income; 3. The Self-Employed Individual’s principal place of residence is in the United States; and 4. The Self-Employed Individual filed or will file a Form 1040 Schedule C for 2019.
Partners in Partnerships	<p>Self-Employed Individuals who are partners in a partnership may not submit a separate PPP loan application for themselves as a Self-Employed Individual. Instead, partners may report their self-employment income (up to \$100,000 annualized) as a payroll cost on a loan application filed by or on behalf of the partnership. This rule applies to both partnerships and limited liability companies filing taxes as a partnership. Applicants should note that participation in the PPP may affect a Self-Employed Individual’s eligibility for state-administered unemployment compensation or unemployment assistance programs.</p>
Maximum Loan Amount	<ol style="list-style-type: none"> 1. <u>Self-Employed Individuals Without Employees.</u> Self-Employed Individuals without employees may determine their maximum loan amount by (a) taking their 2019 IRS Form 1040 Schedule C line 31 net profit amount (if over \$100,000, reduce it to \$100,000; if this amount is \$0 or less, the applicant is not eligible); (b) calculating the average monthly net profit amount by dividing the previous amount by 12; (c) multiplying the average monthly net profit amount by 2.5; and (d) adding the outstanding amount of any EIDL made between January 31, 2020, and April 3, 2020, that the individual seeks to refinance, less the amount of any advance under a COVID-19 EIDL. All Self-Employed Individuals without employees must provide the following with their PPP loan application: (x) a 2019 Form 1040 Schedule C; (y) a 2019 IRS Form 1099-MISC detailing nonemployee compensation received; and (z) an invoice, bank statement or book of record establishing that the individual was in operation on or around February 15, 2020. 2. <u>Self-Employed Individuals with Employees.</u> Self-Employed Individuals with employees may calculate their maximum loan amount by: <ol style="list-style-type: none"> a) Computing 2019 payroll by adding (i) their 2019 IRS Form 1040 Schedule C line 31 net profit amount (if over \$100,000, reduce it

¹⁴ Note that PPP loans to Self-Employed Individuals are under the same budget as all other PPP loans.

	<p>to \$100,000; if this amount is \$0 or less, the applicant is not eligible); (ii) 2019 gross wages and tips paid to employees whose principal place of residence is in the United States (calculated using 2019 IRS Form 941 Taxable Medicare wages and tips (line 5c, column 1)) plus any pre-tax employee contributions for health insurance or other benefits excluded from Taxable Medicare wages and tips (capped at \$100,000 annualized per employee); and (iii) 2019 employer health insurance contributions, retirement contributions and state and local taxes assessed on employee compensation;</p> <ul style="list-style-type: none"> b) Calculating the average monthly amount of the above sum by dividing it by 12; c) Multiplying the average monthly amount by 2.5; and d) Adding the outstanding amount of any EIDL made between January 31, 2020, and April 3, 2020, that the applicant seeks to refinance less the amount of any advance under a COVID-19 EIDL. <p>All Self-Employed Individuals with employees must provide the following with their PPP loan application: (i) 2019 Form 1040 Schedule C, Form 941 (or other tax forms or equivalent payroll processor records containing similar information); (ii) 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; and (iii) a payroll statement or similar documentation from the pay period covering February 15, 2020, establishing that the applicant was in operation on that date.</p>
<p style="text-align: center;">Permissible Loan Uses</p>	<p>The proceeds of a PPP loan to a Self-Employed Individual may be used for the following purposes:</p> <ol style="list-style-type: none"> 1. Owner compensation replacement, calculated based on 2019 net profit; 2. Employee payroll costs for employees whose principal place of residence is in the United States; 3. Mortgage interest payments (but not principal payments or mortgage prepayments) on any business mortgage obligation, business rent payments or business utility payments. The Self-Employed Individual must have claimed or be entitled to claim a deduction for these expenses on the Self-Employed Individual's 2019 Form 1040 Schedule C to be eligible to use loan proceeds for these expenses during the Covered Period; 4. Interest payments on any debt obligation incurred before February 15, 2020; 5. Refinancing an SBA EIDL made between January 31, 2020 and April 3, 2020. <p>Self-Employed Individuals are limited to using any PPP loan proceeds for the above allowable uses for which they made expenditures in 2019. Additionally, 60% of the loan proceeds must be used for payroll costs. The amount of any financed EIDL will be included as a payroll cost for calculation of this percentage, but not for loan forgiveness purposes.</p>

<p style="text-align: center;">Amount Eligible for Forgiveness</p>	<p>Up to the full principal amount of the loan, plus accrued interest, may be forgiven. The amount forgiven will depend on the total amount spent on the following over the Covered Period:</p> <ol style="list-style-type: none"> 1. Payroll costs (up to \$100,000 of annualized pay per employee, a maximum of \$15,385 per individual over the Covered Period) as well as covered benefits for employees, but not owners; 2. Owner compensation replacement, with forgiveness limited to eight weeks' worth of 2019 net profit; 3. Business mortgage payments incurred before February 15, 2020, and deductible on Form 1040 Schedule C; 4. Business rent payments under lease agreements in force before February 15, 2020 and deductible on Form 1040 Schedule C; and 5. Business utility payments under service agreements dated before February 15, 2020, and deductible on Form 1040 Schedule C.
<p style="text-align: center;">Documentation Required for Forgiveness</p>	<p>Self-Employed Individuals must submit the following documentation to their lender for loan forgiveness:</p> <ol style="list-style-type: none"> 1. The borrower certification required by Section 1106(e)(3) of the CARES Act; 2. For Self-Employed Individuals with employees, a Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records corresponding to the Covered Period, with evidence of retirement and health insurance contributions; 3. Evidence of business rent, business mortgage interest payments or business utility payments during the Covered Period if loan proceeds are used for such purposes; and 4. The 2019 Form 1040 Schedule C must be provided to determine the amount of net profit allocated to the Self-Employed Individual during the Covered Period.

EMERGENCY \$10,000 ADVANCES UNDER SECTION 1110

<p style="text-align: center;">General</p>	<p>Certain borrowers may be eligible to receive emergency \$10,000 advances under SBA Section 7(b)(2) (within 3 days of application) and still apply for and receive a PPP loan under Section 7(a).</p>
<p style="text-align: center;">Streamlined Eligibility Requirements</p>	<p>Eligible borrowers for these emergency loans are (i) businesses with 500 employees or less, (ii) individuals operating as a sole proprietorship or independent contractor, (iii) a cooperative with not more than 500 employees, (iv) an ESOP with not more than 500 employees, or (v) a tribal small business concern.</p> <p>These loans do not require personal guarantees, and the SBA would waive additional requirements for businesses to be operational for at least a year prior to loan or first seek (and fail) to find credit elsewhere.</p>

	Approval will be based on applicant's credit score (no need to submit tax return) or other alternative measures. The confirmation for eligibility is done through a self-certification under penalty of perjury.
Permitted Uses of Funds	These emergency funds may be used for the following uses: (i) paid sick leave related to COVID-19, (ii) maintaining payroll, (iii) meeting increased costs to obtain materials, (iv) rent and mortgage payments, and (v) repaying obligations that cannot be met due to revenue losses.
Repayment Procedures	<p>Borrowers are not required to repay any amounts advanced under this section even if subsequently denied a loan under Section 7(b)(2) (eligibility for Disaster Loans under the SBA statute).</p> <p>If a borrower is transferred, or is approved for, a loan under Section 7(a) (i.e., Section 1106), then the advance amount under this Section will be reduced from the loan forgiveness amount for a loan under Section 7(a) for payroll costs (as described above).</p>

For more information, please see the following resources:

1. PPP Resources from the SBA and Treasury Department:

- a. [Top-Line Overview of the Program](#)
- b. [Information Sheet for Lenders](#)
- c. [Information Sheet for Borrowers](#) (updated April 2, 2020)
- d. [Borrower Application Form](#) (updated April 3, 2020)
- e. [Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions \(4/3/2020\)](#) (released April 3, 2020)
- f. [Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders \(4/8/2020\)](#) (released April 8, 2020)
- g. [Lender Agreement to participate in PPP](#) (released April 3, 2020)
- h. [PPP Program Loan Report](#) (updated April 16, 2020)
- i. [How to Calculate Loan Amounts](#)
- j. [Search Tools: Find an Eligible Lender](#)

2. Prior SBA Guidance on the Paycheck Protection Program:

- a. [PPP Frequently Asked Questions](#) (updated May 27, 2020)
- b. [Interim Final Rule 1](#) (originally posted April 2, 2020)
- c. [Interim Final Rule on Applicable Affiliation Rules](#) (originally posted 4/3/2020)

- d. [Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#) (originally posted 4/14/2020)
 - e. [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#) (originally posted 4/24/2020)
 - f. [Interim Final Rule Additional Criterion for Seasonal Employers](#) (originally posted 4/27/2020)
 - g. [Interim Final Rule on Disbursements](#) (originally posted 4/28/2020)
 - h. [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#) (originally posted 4/30/2020)
 - i. [Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria](#) (originally posted May 5, 2020)
 - j. [Interim Final Rule on Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request](#) (originally posted on May 8, 2020)
 - k. [Interim Final Rule on Loan Increases](#) (originally posted May 13, 2020)
 - l. [Interim Final Rule on Eligibility of Certain Electric Cooperatives](#) (originally posted May 14, 2020)
 - m. [Interim Final Rule on Treatment of Entities with Foreign Affiliates](#) (originally posted May 18, 2020)
 - n. [Interim Final Rule on Loan Forgiveness](#) (originally published May 22, 2020)
 - o. [Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#) (originally published May 22, 2020)
3. Prior Haynes and Boone Guidance on the Paycheck Protection Program:
- a. President Signs Paycheck Protection Program Flexibility Act (June 8, 2020)
 - b. [SBA Issues New Guidance on PPP Loan Forgiveness](#) (June 1, 2020)
 - c. [SBA Issues New Guidance on Certification of Necessity Safe Harbor](#) (May 13, 2020)
 - d. [SBA Extends Loan Repayment Safe Harbor Date, Provides Additional Guidance on Employees of Foreign Affiliates](#) (May 7, 2020)
 - e. [Could Retention of PPP Loan Funds Create False Claims Act Liability?](#) (updated May 6, 2020)
 - f. [President Signs Additional Appropriation for Small Business Relief into Law, SBA Clarifies Eligibility of Large Companies for PPP Loans](#) (April 24, 2020)
 - g. [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated April 24, 2020)
 - h. [Special Alert: SBA Releases Additional Guidance via New Interim Final Rule, Update to Frequently Asked Questions on Paycheck Protection Program Loans](#) (April 16, 2020)
 - i. [SBA Releases Additional Guidance via Updates to Frequently Asked Questions on Paycheck Protection Program Loans](#) (April 9, 2020)

- j. [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) (April 6, 2020)
 - k. [SBA Releases Interim Final Rule Outlining Additional Details on Paycheck Protection Program Loans](#) (April 3, 2020)
 - l. [What Franchise and Hospitality Companies Should Know! A Guide to CARES and Other Relief Programs](#) (April 2, 2020)
 - m. [Relief for Employers and Workers under the CARES Act](#) (updated March 29, 2020)
4. Resources on the EIDL Program:
- a. [Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program](#) (Haynes and Boone Alert, May 1, 2020).
 - b. [SBA's COVID-19 Disaster Loan Program](#) (Haynes and Boone Alert, March 24, 2020)
 - c. [SBA EIDL Resource Page](#)

Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate](#) Practice Groups at Haynes and Boone, including the following individuals:

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