

SBA Releases Interim Final Rule Outlining Additional Details on Paycheck Protection Program Loans

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On April 2, 2020, the Small Business Administration (“**SBA**”) released preliminary regulations (the “**Interim Final Rule**”) that provide additional detail about the implementation of the Paycheck Protection Program (“**PPP**”), the small business loan program established pursuant to the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act signed by President Trump on March 27, 2020.¹

The Interim Final Rule includes the following significant information:

1. **Interest. Interest on PPP loans will be set at a fixed rate of 1%** (revised upward from the 0.5% figure described in the SBA and Treasury Department’s preliminary guidance).
2. **Stricter Eligibility Requirements than Previously Expected.**
 - a. **Contrary to initial expectations of many observers, not all types of businesses will be able to apply for PPP Loans.**
 - b. According to the Interim Final Rule, existing SBA Loan ineligibility rules² will apply to the PPP program, with the exception of 501(c)(3) non-profit entities, which are expressly permitted to participate under the CARES Act.
 - c. As a result, the following types of businesses (among others) will likely be ineligible for the program: (i) financial businesses (including mortgage companies) primarily engaged in the business of lending and investment companies, (ii) certain businesses that are majority-owned by individuals *other* than U.S. citizens or legal permanent residents, (iii) private clubs not classified as a 501(c)(3) nonprofit organizations, and (iv) businesses primarily involved in gambling, life insurance, or speculation.
3. **Affiliate Rules are Forthcoming.** The Interim Final Rule provides that the “SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules”, but the SBA has not yet provided such guidance. Without such information, it is still unclear the extent to which small businesses with private equity or venture capital investors will be eligible to participate in the program.³

¹ Note that the Treasury Department and SBA released initial guidance on April 1, 2020. The Interim Rule has the effect of binding law (until further amended or revised), and in the event of discrepancies between the initial guidance and this Interim Final Rule, this Interim Final Rule is applicable.

² These existing rules can be found in [13 CFR 120.110](#) and are described further in the SBA’s [Standard Operating Procedure](#).

³ After bipartisan pressure from Speaker Nancy Pelosi and House Minority Leader Kevin McCarthy, [preliminary news reports](#) indicate that existing affiliation rules will likely be relaxed to allow venture capital-backed startups and private equity-owned portfolio companies to participate in the program, so long as they are not controlled by a single shareholder.

4. Independent Contractors. In calculating the average monthly payroll amounts for purposes of determining the size of PPP loans, payments to independent contractors should be excluded. Such independent contractors are encouraged to apply directly for their own PPP loan.
5. Reduced Verification Requirements for Lenders. To streamline processing and incentivize participation in the program, lenders will no longer need to verify all of the information in borrowers' PPP applications. Instead, lenders will need to simply verify that (i) the requisite borrower certifications have been made, (ii) adequate payroll and salary information has been provided, and (iii) any other information required for compliance with the Bank Secrecy Act or Anti-Money Laundering requirements.
6. Businesses Limited to One Loan per Entity. **Each eligible borrower is only permitted to obtain one PPP loan.** The effect of this rule will likely fall on restaurants and other businesses classified under NAICS code 72, who are eligible for the PPP loan program so long as no single location has more than 500 employees (as opposed to other industries, who must generally have less than 500 employees in the entire entity). For example, if a company owns a large network of restaurant locations in a single entity (and no single restaurant has more than 500 employees), the entity will only be permitted to qualify for one loan for the entity and the maximum loan amount of \$10 million will apply. Note that this remains an active issue, and relief from this rule may be provided in subsequent guidance from the SBA.
7. Program Start Dates.
 - a. Small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders as early as today, April 3, 2020.
 - b. Independent contractors and self-employed individuals may apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders beginning on April 10, 2020.
 - c. Other regulated lenders will be permitted to make PPP loans as soon as they are approved and enrolled in the program⁴.

While this Interim Final Rule provides additional clarity on administration of the PPP loan program, the SBA has indicated that additional guidance and regulations are forthcoming, including with respect to the (i) application of the SBA "affiliate rules", (ii) participation of businesses and non-profits affiliated with religious institutions, and (iii) the mechanics of PPP loan forgiveness and subsequent lender reimbursement.

Given the fast pace of developments, businesses are encouraged to seek advice from qualified legal counsel before applying for a PPP loan.

⁴ Many lenders have expressed the need for additional time to understand the program requirements, process loan applicants and disburse loan proceeds. As a result, the timeline of each borrower's loan application and disbursement of loan proceeds will likely vary depending on the participating lender.



For more information, please see the following resources:

1. Resources from the SBA and Treasury Department:
 - a. [Interim Final Rule](#) (released April 2, 2020)
 - b. [Top-Line Overview of the Program](#)
 - c. [Information Sheet for Lenders](#)
 - d. [Information Sheet for Borrowers](#) (updated April 2, 2020)
 - e. [Borrower Application Form](#) (updated April 2, 2020)
 - f. [Lender Application Form](#) (released April 2, 2020)
 - g. [Lender Agreement to participate in PPP](#) (released April 3, 2020)
2. Prior Haynes and Boone Guidance on the Paycheck Protection Program
 - a. [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated April 3, 2020)
 - b. [What Franchise and Hospitality Companies Should Know! A Guide to CARES and Other Relief Programs](#) (updated April 2, 2020)
 - c. [Relief for Employers and Workers under the CARES Act](#) (updated March 29, 2020)

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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