

Special Alert: SBA Releases Paycheck Protection Program Guidance on Capping Loan Amounts for Corporate Groups and Provides Additional Clarity on Loan Eligibility and Forgiveness

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On April 29 and April 30, 2020, the Small Business Administration (“**SBA**”) provided additional guidance on the Paycheck Protection Program (“**PPP**”) through the issuance of a new PPP [Interim Final Rule](#) (the “**Corporate Group Rule**”), which supplements the first PPP [Interim Final Rule](#), published on April 2, 2020, and the subsequent interim final rules issued since that date (and linked below), as well as issuing updates to the [Frequently Asked Questions document](#) (“**FAQs**”) originally published on April 2, 2020 and updated regularly thereafter. The PPP is a small business loan program established pursuant to Title I of the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act signed by President Trump on March 27, 2020,¹ and supplemented by the Paycheck Protection Program and Health Care Enhancement Act (the “**PPP/HCE Act**”), which provided additional funding for the program.

The Corporate Group Rule includes the following significant information on requirements for corporate groups:

Limitation on Loans to Corporate Groups. Businesses that are part of a single corporate group cannot receive more than \$20 million of PPP loans in the aggregate.

- a. A single corporate group consists of all businesses majority owned, either directly or indirectly, by a common parent.
- b. This limitation applies immediately to all loans that have not been fully disbursed by April 30, 2020. For loans that have been partially disbursed by that date, this limit applies to any further disbursement that would cause the total PPP loans to the single corporate group to exceed \$20 million.
- c. Any PPP applicant who has already applied for or received loans in excess of \$20 million is obligated to notify the lender of this fact and withdraw or request cancellation of any pending application or approved loan that does not comply with this rule.
- d. Failure to withdraw or request cancellation of a noncompliant application or loan shall be deemed a use of PPP funds for unauthorized purposes, and will result in the loan being ineligible for forgiveness.
- e. Lenders may rely upon an applicant’s representation concerning compliance with this rule.
- f. This rule applies in addition to the SBA’s [affiliation rules](#), and does not replace the borrower’s independent obligation to comply with those rules.

¹ Note that the Treasury Department and SBA previously released an Interim Final Rule on April 2, 2020 (the “**Initial Rule**”), subsequent Interim Final Rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, and a second Rule on April 28, 2020 (the “**Subsequent Rules**”), and the Corporate Group Rule on April 30, 2020 (together with the Initial Rule and the Subsequent Rule, the “**Interim Regulations**”). Links for each Interim Final Rule are provided below. Borrowers and lenders may rely on the FAQs as SBA’s interpretation of the CARES Act and the Interim Regulations, but they do not carry the force of independent law. The U.S. government will not challenge lender PPP actions that conform to the FAQs and to the Interim Regulations and any subsequent rulemaking in effect at the time of a borrower’s application.



The latest FAQs guidance includes the following information:

1. Automatic SBA Review of PPP Loans over \$2 Million. 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.
 - a. The outcome of this review will not affect the SBA's guarantee of a loan as long as the lender has complied with its application review obligations under paragraphs III.3.b(i)-(iii) of the Initial Rule issued April 2, 2020.
 - b. 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, as outlined in our [April 24 alert](#).
2. Changes of Ownership. A business that was in operation on February 15, 2020, but underwent a change in ownership following that date, is eligible for a PPP loan as long as that business meets all other eligibility criteria.
 - a. If a business in operation on February 15, 2020 changes ownership through the purchase of substantially all its assets, the acquiring business may apply for a PPP loan even if this change in ownership results in the assignment of a new tax ID number, and even if that acquiring business was not itself in operation until after February 15, 2020.
 - b. When the acquiring business maintains the operations of the pre-sale business, it may rely upon the historic headcount and payroll costs of the pre-sale business for the purposes of its own PPP application, except where the pre-sale business had already applied for and received its own PPP loan.
 - c. The requirement of being "in operation on February 15, 2020," will be applied based on the economic realities of a business's operations.

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

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 April 29, 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)

3. Prior Haynes and Boone Guidance on the Paycheck Protection Program:

- a. [President Signs Additional Appropriation for Small Business Relief into Law, SBA Clarifies Eligibility of Large Companies for PPP Loans](#) (April 24, 2020)
- b. [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated April 24, 2020)
- c. [Special Alert: SBA Releases Additional Guidance via New Interim Final Rule, Update to Frequently Asked Questions on Paycheck Protection Program Loans](#) (April 16, 2020)
- d. [SBA Releases Additional Guidance via Updates to Frequently Asked Questions on Paycheck Protection Program Loans](#) (April 9, 2020)
- e. [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) (April 6, 2020)
- f. [SBA Releases Interim Final Rule Outlining Additional Details on Paycheck Protection Program Loans](#) (April 3, 2020)
- g. [What Franchise and Hospitality Companies Should Know! A Guide to CARES and Other Relief Programs](#) (April 2, 2020)
- h. [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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