



Interim Final Rule – Paycheck Protection Program Summary

The SBA and Treasury released the Interim Final Rule governing the Paycheck Protection Program Thursday April 2. The PPP program went live for existing SBA lenders Friday, April 3. On Sunday, April 5, Secretary Mnuchin and SBA officials said the AWS platform for lenders who aren't current SBA lenders will go live Monday, April 6. The following is a summary of the Interim Final Rule, which applies to applications submitted under the PPP through June 30, 2020, or until funds made available for this purpose are exhausted. (Note: Secretary Mnuchin said as recently as April 5 that if more funds are needed for PPP small business loans, more funds will be made available.)

The Treasury Department created a PPP Loan FAQ and uploaded it to its www.treasury.gov/cares site Sunday, April 5. To date, there is only one question posed; however, this will likely change as more banks start originating PPP loans.

Loans guaranteed under the PPP are 100% guaranteed by the SBA, and the full principal amount may qualify for loan forgiveness.

1. General

- SBA authorized to guarantee loans through June 30, 2020.
- Intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously, which is evidenced by giving *all* lenders delegated authority and streamlining the application process.
- Lenders do not have to comply with "What are SBA's lending criteria?"
- Allows lenders to rely on certifications of the borrower in order to determine eligibility of borrower and use loan proceeds and to rely on specific documents provided by the borrower to determine qualifying loan amount and eligibility for forgiveness.
- Lenders must comply with applicable lender obligations but will be held harmless for borrowers' failure to comply with program criteria.

2. What Do Borrowers Need to Know and Do?

a. *Am I eligible?*

You are eligible if you have fewer than 500 employees whose principal place of residence is US, or are a business that operates in a certain industry and meets applicable SBA-employee based size standards for that industry, and:

- i. You are:
 - A. A small business concern as defined in §3 of the Small Business Act;
 - B. A tax-exempt organization under Secs. 501(c)(3) or 501(c)(19), Internal Revenue Code, or are a Tribal business concern described in §31(b)(2)(C), Small Business Act; and
- ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on Form 1099-MISC.

Sole proprietors, independent contractors, and eligible self-employed individuals in operation on February 15, 2020 are also eligible. You must submit documents necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietor. Don't have any of this documentation? You must provide other supporting documentation, such as bank records, sufficient to demonstrate qualifying payroll amount.

The SBA intends to issue additional guidance with regard to the applicability of affiliation rules. *(This guidance was issued on April 4 and can be found at: <https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>)*

b. *Could I be ineligible even if I meet the eligibility requirements in (a) above?*

You are ineligible for a PPP loan if, for example:

- i. You're engaged in an illegal activity;
- ii. You're a household employer;
- iii. You have an owner of 20% or more of your company's equity that is in jail, on probation, on parole, subject to an indictment, criminal information, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last 5 years; or
- iv. You or any business owned or controlled by you or any of our owners has ever obtained a direct or guaranteed loan from SBA or any other federal agency that is delinquent or has defaulted within the last 7 years and caused a loss to the government.

Why aren't household employers eligible? The SBA Administrator and the Secretary of the Treasury have determined household employers are ineligible because they are not businesses.

c. *How do I determine if I'm ineligible?*

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in the SBA's Stand Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible.

d. *I have determined that I am eligible. How much can I borrow?*

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

e. *How do I calculate the maximum amount I can borrow?*

The following methodology will be most helpful for many applicants (there are additional methodologies in the Act):

- i. **Step 1:** Aggregate payroll costs (defined in f. below) from the last twelve months for employees whose principal place of residence is the US.

- ii. **Step 2:** Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an IC or sole proprietor in excess of \$100,000/year.
- iii. **Step 3:** Calculated average monthly payroll costs (divide **Step 2** by 12).
- iv. **Step 4:** Multiply the average monthly payroll cost in **Step 3** by 2.5.
- v. **Step 5:** Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid.)

Examples illustrating this methodology:

- i. No employees make more than \$100,000
 Annual payroll costs: \$120,000
 Average monthly payroll costs: \$10,000
 Multiply by 2.5 = \$25,000
 Maximum PPP loan amount = \$25,000

- ii. Some employees make more than \$100,000
 Annual payroll costs: \$1,500,000
 Subtract compensation amounts in excess of annual salary of \$100,000:
 \$1,200,000
 Average qualifying monthly payroll costs: \$100,000
 Multiply by 2.5 = \$250,000
 Maximum PPP loan amount = \$250,000

- iii. No employees make over \$100,000, outstanding EIDL loan of \$10,000
 Annual payroll costs: \$120,000
 Average monthly payroll costs: \$10,000
 Multiply by 2.5 = \$25,000
 Add EIDL loan of \$10,000 = \$35,000
 Maximum PPP loan amount = \$35,000

- iv. Some employees make more than \$100,000, outstanding EIDL loan of \$10,000
 Annual payroll costs: \$1,500,000
 Subtract compensation amounts in excess of annual salary of \$100,000:
 \$1,200,000
 Average qualifying monthly payroll costs: \$100,000
 Multiple by 2.5 = \$250,000
 Add EIDL loan of \$10,000 - \$260,000
 Maximum PPP loan amount = \$260,000

f. What qualifies as “payroll costs”?

Compensation to employees (whose principal place of residence is in the US) in the form of:

salaries, wages, commissions or similar compensation;
cash tips or the equivalent;
payment for vacation, parental, family, medical, or sick leave;
allowance for separation or dismissal;
payment for provision of employee group health benefits, including insurance premiums, and retirement;
payment of state and local payroll taxes; and
for an IC or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

g. *Is there anything that is expressly excluded from payroll costs?*

Yes. The CARES Act expressly excludes compensation to employees living outside of the US; compensation to individual employees whose salaries exceed \$100,000; federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including FICA and RR retirement taxes, and income taxes required to be held from employees; and qualified sick and family leave wages for which a credit is allowed under the FFCRA.

h. *Independent Contractors do not count as employees for purposes of PPP loan calculations.*

i. *What is the interest rate on a PPP loan?*

The interest rate will be 100 basis points or one percent.

The Administrator and Secretary determined 1% is appropriate because:

First, it provides low cost funds to borrowers.

Second, for lenders, 100 basis points offers an attractive interest rate relative to the cost of funding or comparable maturities.

Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. This higher yield combined with the fact that the loans are 100% guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate.

j. *What will be the maturity date of a PPP loan?*

The maturity date is two years. The CARES Act provided up to a 10 year term, but the Administrator and Secretary determined that a two year loan term is sufficient in light of the temporary economic disruptions caused by COVID-19.

k. *Can I apply for more than one PPP loan?*

No. The Administrator and the Secretary have determined that no eligible borrower may receive more than one PPP loan. Borrowers should consider applying for the maximum amount. The Secretary and Administrator determined that one loan per borrower is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan.

l. E-signatures and e-consents are appropriate if a borrower has multiple owners.

m. The PPP is first-come, first served.

n. When will I have to begin paying principal and interest on my PPP loan?

Borrowers do not have to make any payments for six months following the date of loan disbursement. However, interest will continue to accrue during this six-month deferment. The Administrator and Secretary determined that a six-month deferment period is appropriate in light of the 1% interest rate and the loan forgiveness provisions in the CARES Act.

o. Can my PPP loan be forgiven in whole or in part?

Yes.

The amount of loan forgiveness can be up to the full principal amount of the loan plus any accrued interest. The borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and compensation levels are maintained.

The amount of loan forgiveness depends on:

Total payroll costs, interest payments on mortgages incurred before 02/15/2020, rent payments on leases entered into before 02/15/2020, and utility payments under service agreements dated before 02/15/2020, over the eight-week period following the date of the loan. **HOWEVER**, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. The Administrator has determined that the non-payroll portion of the forgivable loan should be limited to 25% to effectuate the core purpose of the statute to ensure finite program resources are devoted primarily to payroll.

How was the 75% figure arrived at? Secretary and Administrator believe applying this threshold is consistent with the structure of the Act, which provides a loan amount 75% of which is equivalent to eight weeks of payroll (8 weeks (56 days) / 2.5 months (76 days) = 74% rounded up to 75%). Limiting non-payroll costs to 25% of the forgiveness amount will help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on PPP forgiveness.

p. Do ICs count as employees for purposes of loan forgiveness?

No. Since independent contractors (ICs) have the ability to apply for a PPP loan on their own, they do not count for purposes of a borrower's PPP loan forgiveness.

q. What forms do I need and how do I submit an application?

Applicant must submit [SBA Form 2483](#) (Paycheck Protection Program Application Form) and payroll documentation described in 2.a. above

Lender must submit [SBA Form 2484](#) (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

r. *How can PPP loans be used?*

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

- i. Payroll costs (defined in 2.f.);
- ii. Costs related to the continuation of group health care benefits;
- iii. Mortgage interest payments (no prepayments or principal payments);
- iv. Rent payments;
- v. Utility payments;
- vi. Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- vii. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an 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 PPP eligibility.

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.

However, at least 75% of the PPP loan proceeds shall be used for payroll costs. As with the similar limitation on the forgiveness amount explained in 2.o., the Administrator and Secretary have determined that 75% is an appropriate percentage that will align this element of the program with the loan amount, 75% of which is equivalent to 8 weeks of payroll.

s. *What happens if PPP loan funds are misused?*

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability, such as charges for fraud.

t. *What certifications need to be made?*

On the [SBA Form 2483](#) application, an authorized representative of the applicant MUST certify in good faith to all of the below:

- i. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid ICs, as reported on Form 1099-MISC.
- ii. Current economic uncertainty makes the loan request necessary to support the ongoing operations of the applicant.
- iii. The funds will be used to retain workers and maintain payroll or make mortgage interest, lease, and utility payments. I understand that if the funds are knowingly

used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. As explained above, not more than 25% of loan proceeds may be used for non-payroll costs.

- iv. Documentation verifying the number of FTEs on payroll as well as the dollar amounts of payroll costs, covered mortgage interest, rent, and utility payments for the eight week period following the PPP loan will be provided to the lender.
- v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest, rent, and utility payments. As explained in 2.o. above, not more than 25% of the forgiven amount may be for non-payroll costs.
- vi. During the period of February 15, 2020 – April 3, 2020 the applicant has not and will not receive another PPP loan.
- vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured financial institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents that I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

3. What Do Lenders Need to Know and Do?

a. Who is eligible to make PPP loans?

- i. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.
- ii. CARES Act provides that the authority to make PPP loans can be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. The Administrator and Secretary have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by June 30, 2020.
- iii. The following types of lenders are eligible to make PPP loans unless they're currently designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action that addresses unsafe or unsound lending practices:

- I. Any federal insured depository institution or federally insured credit union;
- II. Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) that applies the requirements under the Bank Secrecy Act as a federally regulated financial institution, or functionally equivalent requirements; and
- III. Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial receivables and participation interests; has a formalized compliance program; applies BSA requirements as a federally regulated financial institution; has been operating since at least February 15, 2019, and has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a 12 month period in the past 36 months, or is a service provider to any insured depository institution that has a contract to support such institution's lending activities in accordance with 12 USC §1867(c) (SERVICES PERFORMED BY CONTRACT OR OTHERWISE) and is in good standing with the appropriate federal banking agency.
- iv. Qualified institutions described in 3.a.iii. I. and II. will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement ([SBA Form 3506](#)) unless they are currently designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices. New lenders will also have to submit a "Certificate of Incumbency" with your application. A "Certificate of Incumbency" is not a form required by Texas law; however, it loosely equivalates to a notarized statement including the officers of the corporation (or partnership) who are authorized to act on behalf of the corporation (or partnership).

b. What do lenders have to do in terms of loan underwriting?

Each lender SHALL:

- i. Confirm receipt of borrower certifications contained in [SBA Form 2483](#) (Paycheck Protection Program Application Form);
- ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
- iii. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and
- iv. Follow applicable BSA requirements:
 - I. Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans. PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

- II. Entities that are not presently subject to BSA requirements, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an AML compliance program equivalent to that of a comparable federally regulated institution. If entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at FRC@fincen.gov.

Each lender’s underwriting obligation under the PPP is limited to the items above and reviewing the “Paycheck Protection Application Form” (*Please note, it’s unclear from the Interim Final Rule whether this is the Borrower Application Form, the Lender Application Form, or the New Lender Application Form.*) 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 proprietor. 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.

c. Can lenders rely on borrower documentation for loan forgiveness?

Yes. 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 accurately verified the payments for eligible costs.

The Administrator will hold harmless any lender that relies on such borrower documents and attests that it has accurately verified the payments for eligible costs.

The Administrator and Secretary determined that lender reliance on a borrower’s required documents and attestation is necessary and appropriate in light of statutory language which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

d. What fees will lenders be paid?

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

Lender Fee	Loan Amount
5%	Loans of not more than \$350,000
3%	Loans of more than \$350,000 and less than \$2,000,000
1%	Loans at least \$2,000,000

e. Lenders to NOT have to apply the “credit elsewhere test”.

4. What do Both Borrowers and Lenders Need to Know and Do?

a. What are the loans terms and conditions?

Loans are guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes, including but not limited to:

- i. 100% guaranteed
- ii. No collateral required
- iii. No personal guarantee required
- iv. Interest rate is 100 basis points
- v. All loans will be processed by lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds

b. Are there any fee waivers?

- i. No up-front guarantee fee payable to SBA by Borrower;
- ii. No lender’s annual service fee (“on-going guaranty fee”) payable to SBA;
- iii. No subsidy recoupment fee; and
- iv. No fee payable to SBA for any guarantee sold into the secondary market.

c. Who pays the fee to an agent who assists a borrower?

Agent fees will be paid by the lender out of the fees the lender receives from SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for preparing a PPP loan application may not exceed:

Agent Fee	Loan Amount
1%	Loans of not more than \$350,000
0.5%	Loans of more than \$350,000 and less than \$2,000,000
0.25%	Loans at least \$2,000,000

d. Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value. ** SBA will issue guidance regarding any advance purchase for laons sold in the secondary market. **

e. Can SBA purchase some or all of the loan in advance?

Yes. a lender may request that the SBA purchase the expected forgiveness amount of the PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, rent, and utility payments during the eight weeks after loan disbursement. At least 75% of the expected forgiveness amount should be for payroll costs, as provided in 2.o. above.

To submit a PPP loan or pool of loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA.

The report shall include:

- [SBA Form 2483](#) (Borrower's Application) and any supporting documentation submitted with such application;
- [SBA Form 2484](#) (Lender's Application) and any supporting documentation;
- 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;
- Any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation;
- And any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable.

The Administrator and Secretary determined that seven weeks is the minimum period necessary for a lender to reasonably determine the expected forgiveness amount for a PPP loan or a pool of PPP loans, since the PPP is a new program and the likelihood that many borrowers will be new clients of the lender. The expected forgiveness amount may not exceed the total amount of principal.

The Administrator will 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.

5. Additional Information

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted at www.sba.gov.

Questions on PPP loans may be directed to the Lender Relations Specialist in the local SBA Field Office.

Lenders who need assistance accessing SBA's E-Tran system to process loan guarantee requests should call the SBA's Lender Customer Service line at: (833)572-0502.