



Paycheck Protection Program – Guidance for Borrowers & Lenders

CSBS Summary & Helpful Resources

Title: Business Loan Program Temporary Changes; Paycheck Protection Program [RIN 3245-AH34]

Agency: U.S. Small Business Administration

Type: Interim Final Rule

Comment Due Date: 30 days from date of publication in the Federal Register

Overview

- The Small Business Administration (“SBA”) has published an [interim final rule](#) announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”).
- The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020. Specifically:
 - **Section 1102** of the Act temporarily permits SBA to guarantee 100% of 7(a) loans under a new program called the “Paycheck Protection Act” (“PPP”).
 - **Section 1106** of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

Below is a summary of the interim rule and helpful resources.

Summary

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, the “Phase III” relief bill which the President signed into law last week, provides significant relief for small businesses, including \$377 billion for Small Business Administration (SBA) loan guarantees and subsidies and additional funding for SBA resources.

The Paycheck Protection Program (PPP) is a \$350 billion program to help small businesses keep workers employed amid the pandemic and economic downturn. The initiative provides 100% federally guaranteed loans to small businesses. The program is available April 3, 2020 through June 30, 2020.

Eligibility

The following are **eligible** for PPP loans:

- All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply.
- Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (additional information is available here).

The following are **ineligible** for a PPP loan, even if they would otherwise be classified as a small business:



- Those engaged in any activity that is illegal under federal, state, or local law, including marijuana-related businesses that are not legal at the federal level;
- Household employers (individuals who employ household employees such as nannies or housekeepers);
- An owner of 20% or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or
- Borrowers who are currently delinquent or who have ever defaulted on a direct or guaranteed loan from SBA or any other Federal agency and caused a loss to the government.
- Other ineligible businesses can be found on SBA's Standard Operating Procedure (SOP) 50 10 Subpart B, Chapter 2 available [here](#).
 - **Note: Banks are listed as ineligible businesses, and as such will not be able to receive PPP loans. CSBS is still seeking clarification from the Treasury Department and SBA on this point.**

Dates for PPP Applications

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

Loan Forgiveness for Borrowers

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8-week period after the loan is made; and
- Employee and compensation levels are maintained. Payroll costs are capped at \$100,000 on an annualized basis for each employee.
- Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. Loan payments will be deferred for 6 months

Eligible PPP Lenders & Process to Become Eligible PPP Lenders

The following entities are eligible to make PPP loans:

- All currently approved SBA 7(a) lenders are automatically approved to make PPP loans.
- Unless currently designated by their primary federal regulator as in "Troubled Condition" or subject to a formal enforcement action due to unsafe or unsound lending practices, then:
 1. Any federally insured depository institution or federally insured credit union.
 2. Any Farm Credit System institution other than Farmer Mac.
 - *Entities outlined in 1 and 2 that submit a CARES Act Section 1102 Lender Agreement ([SBA Form 3506](#)) will be automatically qualified to be eligible PPP lenders.*
 3. Any depository or non-depository commercial lender in operation since at least February 15, 2019 that:
 - originates, maintains, and services business loans or other commercial financial receivables and participation interests;



- has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12-month period in the past 36 months; and
- has a formalized compliance program and applies requirements under the BSA;
- or is a service provider providing support to any insured depository institution's lending activities.
 - *The process to become an eligible PPP lender for entities outlined in 3 has not been explained yet by SBA.*

PPP Loan Underwriting & Borrower Eligibility

Lenders are not required to verify the information submitted by a borrower. Rather, they are required to simply confirm:

- Receipt of borrower certifications contained in the PPP application form;
- Receipt of information demonstrating that a borrower had employees for whom salaries and payroll taxes were paid on or around February 15, 2020; and
- The amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the application.

Additionally, lenders must follow applicable BSA requirements for PPP loans. PPP loans to existing customers do not require re-verification under applicable BSA requirements. Additionally, any entity not currently subject to BSA that wishes to participate as a PPP lender must establish an AML compliance program that is comparable to that of a federally regulated institution.

Lenders are not required to apply the SBA's "credit elsewhere test" to evaluate an applicant's eligibility.

PPP Loan Forgiveness Documentation

Lenders can rely on a borrower's documentation for loan forgiveness. 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. SBA will hold harmless any lender relying on borrower documentation and borrower attestation.

PPP Loan Processing Fees

SBA will pay lenders processing fees on PPP loans as follows:

- 5% for loans of \$350,000 or less;
- 3% for loans of more than \$350,000 and less than \$2,000,000; and
- 1% for loans of \$2,000,000 or more.

PPP Loan Guarantees & Waiving of Other Fees

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with the following changes:

- The guarantee is 100%.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 1.00%.
- Lender can rely on certifications of the borrower to determine eligibility.



Typical SBA fees are being waived:

- There will be no up-front guarantee fee payable to SBA by the Borrower;
- There will be no lender's annual service fee to SBA;
- There will be no subsidy recoupment fee
- There will be no fee payable to SBA for any guarantee sold into the secondary market.

Agent Fees

Agent fees will be paid by the lender out of the fees the lender receives from SBA. The amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral) cannot exceed:

- 1% for loans of not more than \$350,000;
- 0.50% for loans of more than \$350,000 and less than \$2 million; and
- 0.25% for loans of at least \$2 million

SBA defines an agent as:

- An attorney;
- An accountant;
- A consultant;
- Someone who prepares an applicant's application for financial assistance and is employed and compensated by the applicant;
- Someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans;
- A loan broker; or
- Any other individual or entity representing an applicant by conducting business with the SBA.

PPP Loans & the Secondary Market

- 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 loans sold in the secondary market.
- SBA may purchase some or all of the loan in advance. A lender may request the expected forgiveness amount on a loan or pool of loans at the end of week seven of the covered period. *Staff are seeking further clarity on this date but believe it may be Monday, April 6th.*
- To submit for advance purchase from SBA, a lender must submit a report requesting advance purchase with the expected forgiveness amount to the SBA.

The report must include the following:

- The Paycheck Protection Program Application Form (SBA Form 2483)
- Any supporting documentation submitted with such application
- The Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation;
- A detailed narrative explaining the assumptions used in determining the expected forgiveness amount
- Other relevant loan documentation

The SBA will complete the purchase within 15 days of receiving the report (assuming it is properly completed and the expected forgiveness is reasonable).



Additional Resources

Additional guidance should be forthcoming from the Small Business Administration and Treasury Department.

- [List of local SBA field offices](#)
- [SBA Form 2483 \(Application for Borrowers\)](#)
- [SBA Form 2484 \(Application for Lenders\)](#)
- [FinCEN Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [Treasury -If you are a Borrower](#)
- [Treasury- If you are a Lender](#)