

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Paycheck Protection Program (PPP)

On March 27, 2020, the President signed into law the **Coronavirus Aid, Relief, and Economic Security Act (CARES Act)** which provides a \$2 trillion stimulus package in response to the COVID-19 pandemic. **In particular, Section 1102 of the Act creates a new “Paycheck Protection Program” (PPP) to be added to the existing Small Business Act.** The Program authorizes the Small Business Administration (SBA) to 100% guarantee all PPP loans. The SBA is required to provide guidance to PPP lenders within 30 days of enactment of the CARES Act.

ELIGIBILITY FOR LENDERS

Additional lenders must have necessary qualifications to process, close, disburse, and service PPP loans.

On the other hand, there is no requirement for any Bank to make PPP loans.

The Act authorizes the SBA and U.S. Department of Treasury to extend authority to make PPP loans to additional lenders beyond those already certified to make regular SBA 7(a) loans. **This means that lenders do not have to currently be certified SBA lenders to participate in the PPP**, which creates an important lending option for our community bank members.

Note: Additional lenders approved by Treasury are only permitted to make PPP loans, not regular SBA 7(a) loans.

ELIGIBILITY FOR BORROWERS

A borrower eligible for a PPP loan includes any for-profit business concern, nonprofit organization, veterans organization, or Tribal business concern, if the business employs 500 or fewer employees. “Employees” for this purpose includes full-time, part-time, and “other” employees. **Sole proprietors, independent contractors and self-employed individuals are also eligible to receive a covered loan.** An eligible recipient applying for a covered loan must provide a good faith certification. The certification must state:

- » “That the uncertainty of current economic conditions **makes necessary the loan request** to support the ongoing operations of the eligible recipient;
- » Acknowledging that funds will be used to **retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;**
- » That the eligible recipient **does not have an application pending for a loan under this subsection for the same purpose** and duplicative of amounts applied for or received under a covered loan; and
- » During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient **has not received amounts under this subsection for the same purpose** and duplicative of amounts applied for or received under a covered loan.”

LOAN PROCEEDS MAY BE USED FOR ...

- » Payroll costs;
- » Group healthcare benefits during the covered period, including paid sick, medical or family leave, and insurance premiums;
- » Employee salaries, commissions, or similar compensations;
- » Payments of mortgage interest (excluding principal);
- » Rent;
- » Utilities; and
- » Interest on any other debt obligations that were incurred during the covered period.

In evaluating eligibility of a borrower for this purpose, a lender must consider whether the borrower:
Was in operation on February 15, 2020; and
Had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors.

WHAT COUNTS AS A PAYROLL COST?

- » **Salary, wage, commission**, or similar compensation (maximum of \$100,000);
- » Payment of **cash tip** or equivalent;
- » Payment for **vacation, parental, family, medical, or sick leave**;
- » Allowance for **dismissal or separation**;
- » Payment for **healthcare benefits**;
- » Payment for **retirement benefits**; and
- » Payment of **payroll taxes**.

It also includes compensation to or income of a **sole proprietor or independent contractor** that is a wage, commission, income, net earnings or similar compensation from self-employment. This is also **capped at a maximum of \$100,000 per year**, prorated for the covered period.

COVERED LOAN TERMS

MAXIMUM LOAN AMOUNT

The maximum loan amount for a PPP covered loan is determined under the formula below. In any case, the maximum loan amount may not exceed \$10,000,000.

$$\left(\begin{array}{l} \text{Average total monthly payments for} \\ \text{payroll costs incurred over a one-year} \\ \text{period prior to the origination date} \end{array} \right) \times 2.5 + \begin{array}{l} \text{Outstanding amount of any SBA EIDL} \\ \text{loan (Economic Injury Disaster Loan)} \end{array}$$

MAXIMUM MATURITY DATE

Covered loans shall have a maximum maturity of 10 years.

MAXIMUM INTEREST RATE

The interest rate for covered loans must not exceed 4 percent.

PREPAYMENT PENALTIES

A prepayment penalty is not allowed for any payment made on a covered loan.

NONRECOURSE

The SBA Administrator shall have no recourse against any eligible recipient of a covered loan.

COLLATERAL AND GUARANTEE

Borrowers cannot be required to provide a personal guarantee for a covered loan, and no collateral can be required for the covered loan.

COVERED PERIOD

PPP loans must be made between February 15, 2020 and June 30, 2020. The deadline for applying for a PPP loan is June 30, 2020.

LOAN DEFERMENT

PPP lenders must provide complete payment deferment relief for borrowers with PPP loans for a period of not less than 6 months and not more than 1 year. The deferment must include principal, interest, and fees, but interest accrues during the deferment period.

SECONDARY MARKET

If a PPP loan is sold on the secondary market and an investor declines to approve a deferral request, the SBA will purchase the loan so that the borrower can receive the deferral period above.

FREQUENTLY ASKED QUESTIONS

Q: Is the SBA going to create a link to apply or calculate the loan and allow to choose a lender or put lender in automatically?

A: Both the SBA and the Treasury have released sample application forms, but have not created online applications on their respective websites. There's no indication that either will do this and the current guidance indicates that applicants will have to apply directly through existing SBA-certified lenders or other lenders who become approved to make PPP loans specifically.

- » SBA sample application: https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application_0.pdf
- » Treasury sample application: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf> <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf> <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

Q: We are a certified SBA lender, but we do not appear on the Region 6 PLP Lenders. From what I read if you are certified lender then you can participate in the PPP program. Is that correct?

A: Yes, this is correct. If your Bank is a certified SBA lender, your Bank can automatically make Paycheck Protection Program (PPP) Loans—there's no additional application or approval process. "All existing SBA-certified lenders will be given delegated authority to speedily process PPP loans." The Treasury Fact Sheet, issued March 30, 2020, states in the first question:

Who is eligible to lend?

All existing SBA-certified lenders will be given delegated authority to speedily process PPP loans. All federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions are eligible to participate in this program.

<https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>

Lenders who are not currently certified can begin making loans as soon as they are approved and enrolled in the Program. New lenders seeking enrollment will have to submit their application to the SBA at: DelegatedAuthority@sba.gov

FREQUENTLY ASKED QUESTIONS

Q: How long will bank carry the PPP loans on its books? Is SBA ever going to purchase these loans back? The bank will apply for the forgiveness of the loans, but not a specific buyback from the bank; however, PPP loans can be sold on the secondary market, but do not have to be.

A: If the Bank were to sell a PPP loan on the secondary market, the SBA will not collect any fee for any guarantee sold into the secondary market: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HE1000065D4F74258BB89139F6D65DD38>

The SBA will guarantee any applicable forgiveness on the secondary market: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HD871E8CC14AD4D36A576ABC238B6DFF2>

The SBA will also purchase a PPP loan from a secondary market investor, if the investor doesn't approve a borrower's deferral request: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HF0421E814C1B43AD8B37CE6E7F50CEF9>

Q: How do we receive the fee from SBA?

A: Banks will only be paid processing fees based on the balance of the financing outstanding at the time of the loan disbursement. The reimbursement of the processing fee has to be made to the Bank within 5 days after the disbursement of the PPP loan: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H6561325FE69F4E9AB8165879CA3281CD>

The amount of the processing fee varies based on the loan amount as follows:

- » Loans \$350,000 and under: 5.00%
- » Loans greater than \$350,000 to \$2 million: 3.00%
- » Loans greater than \$2 million: 1.00%
- » <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HB806EB2A5CA4464BAEEF515C3308FD52>

FREQUENTLY ASKED QUESTIONS

Q: How will the forgiveness aspect of loan work? Done before going to SBA etc.

A: Loan amounts must be forgiven as long as 1) the loan proceeds are used for “allowable uses” (these include payroll costs, and certain mortgage interest, rent, and utility costs) over the 8 week period after the loan is made, and 2) employee and compensation levels are maintained.

In other words, the amount of forgiveness will be reduced if the loan proceeds are not used for allowable uses, if full-time headcount declines, or if salaries and wages decrease.

A borrower must apply to the Bank for loan forgiveness—it’s not automatic. The application process requires the borrower to submit to the Bank certain IRS and state filings, documentation that the proceeds were used for “approved uses” like lease and utility payments, a certification, and any other documentation the SBA or Treasury may require. See here for specific requirements: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H0833DD4491144A65ABA1DCE34FB19055>

The Bank has to make a decision on the application for forgiveness within 60 days of receiving the application. Note that the Bank has to require this documentation—forgiveness is not allowed without it. As long as the Bank receives the required documentation above, there’s a hold harmless provision for the Bank for enforcement actions and other penalties.

As far as how the Bank will get paid for the amount forgiven, the SBA will remit to the Bank the total amount forgiven within 90 days after determining the amount, plus any interest accrued through the date of the SBA’s payment to the Bank.

(3) REMITTANCE.—Not later than 90 days after the date on which the amount of forgiveness under this section is determined, the Administrator shall remit to the lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

<https://www.congress.gov/bill/116th-congress/house-bill/748/text#HCF8316652ED34A56940BC9F50BF2A1F5>

FREQUENTLY ASKED QUESTIONS

Q: What happens to the payments that are deferred?

a. Does the Bank not get paid?

A: All loan payments (including principal, interest, and fees) have to be deferred for at least 6 months (and at most 12 months), but interest will continue to accrue over the deferral period. The Bank can't require the borrower to begin repaying the loan before the 6-month period is up.

The Bank still gets paid the full, applicable processing fee despite the payment deferral. The Bank cannot collect any other fee from the borrower though. See: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H85AF24C805BF452FAF29299B2657A14D>

The SBA is required to provide additional guidance on the deferment process within 30 days of enactment (April 26, 2020): <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H7A39205E55E94009BFC3C213A746F78D>

b. Does SBA make payments on behalf of borrower?

A: SBA does not make payments on behalf of borrowers, but the SBA does pay the Bank a processing fee for originating the loan:

- » Loans \$350,000 and under: 5.00%
- » Loans greater than \$350,000 to \$2 million: 3.00%
- » Loans greater than \$2 million: 1.00%
- » <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HB806EB2A5CA4464BAEEF515C3308FD52>

Q: Should utilities, rent, leases, interest expense be included in calculation or will it just be the 2.5 times average monthly payroll?

A: The CARES Act indicates that the 2.5 multiplier used in calculating the maximum loan amount should only be multiplied against the average total monthly payroll: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HB774EEF7D0A34671AE7C32877C38ACF2>

FREQUENTLY ASKED QUESTIONS

Q: Do we need to do Beneficial owner and all BSA side of things?

A: Yes, the beneficial ownership requirements are still in effect, and are not waived for PPP or other SBA loans. In fact, the sample application form released by the Treasury March 31, 2020 includes a section to collect beneficial ownership information under “Applicant Ownership” here: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

Further, the fact sheet released by the Treasury March 31, 2020 explicitly provides: “You will need to follow applicable Bank Secrecy Act requirements.” <https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>