When Will The SBA Resume Authorizing PPP Loans?

The SBA resumed authorizing PPP loans on April 27, 2020, and will continue to do so until funds appropriated by Congress are exhausted.

Who Is Eligible for A Loan?

- **Borrower Size:** Borrower must be a “small business concern” or a business with no more than 500 U.S. resident employees (or a greater number of employees as is used in the “small business concern” test otherwise applicable to the borrower). The SBA issued an Interim Final Rule on May 18, 2020, providing that borrowers must include all employees of the borrower and its affiliates, including non-U.S. resident employees, when determining whether it meets the borrower size test. However, the SBA has taken the position that borrowers who applied for PPP loans before May 5, 2020, and excluded non-U.S. employees from their calculations of employee headcount, will not be deemed ineligible if such borrowers, together with their respective affiliates, had no more than 500 employees that were U.S. residents when they applied.

- **Employees:** Includes full-time, part-time, and temporary employees.

- **Independent Contractors or Sole Proprietors:** An employer may not include payments to independent contractors or sole proprietors, but independent contractors or sole proprietors will themselves be eligible to apply for a PPP loan, if they otherwise satisfy the applicable requirements (described in the remainder of this section) commencing April 10, 2020. To be eligible, an independent contractor or sole proprietor must meet the following criteria: (i) you were in operation on February 15, 2020; (ii) you are an individual with self-employment income (such as an independent contractor or a sole proprietor); (iii) your principal place of residence is in the United States; and (iv) you filed or will file a Form 1040 Schedule C for 2019. However, individual partners in a partnership may not apply for a PPP loan in their individual capacity as a partner in the partnership. In the case of partnerships, the partnership itself is the eligible entity. Self-employment income of general active partners may be reported as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. The SBA plans to issue additional guidance for those individuals with self-employment income who: (a) were not in operation in 2019, but who were in operation on February 15, 2020, and (b) will file a Form 1040 Schedule C for 2020.

- **Affiliation:** The broad “affiliation” rules traditionally used for SBA loans (which require potential borrowers to aggregate the employees of affiliated companies) will apply to the 500-employee test. The affiliation rules would generally require the affiliates of any 50% or greater shareholder, or any minority shareholder who has control over certain operational decisions (e.g., via veto rights), to be aggregated with the borrower for purposes of determining eligibility. Additionally, if any minority shareholder is deemed to control the business, because they have the right to prevent a quorum or otherwise block action by the board of directors or shareholders under 13 C.F.R. § 121.301(f)(1) and gives up those rights, then they are not considered to be an affiliate of the business if it
Borrower Need: In addition to complying with applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standards established by the CARES Act and the PPP regulations in place at the time they submit their PPP loan applications. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, each borrower is required to certify that “[c]urrent economic uncertainty makes [its PPP] loan request necessary to support [its] ongoing operations.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

For borrowers who already have received PPP loans, the SBA has provided guidance stating that any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the PPP loan request in good faith. Additionally, any borrower who previously applied for and received a PPP loan, and repays the PPP loan in full by May 18, 2020, will be deemed by the SBA to have made the required financial need certification in good faith.

Further, borrowers who have received PPP loans greater than $2 million may still have an adequate basis, based on their individual circumstances, for making the required good faith certification regarding financial need described above.

Restaurants/Lodging: As applied to accommodation and food services businesses (NAICS code 723):

» the “affiliation” rules are explicitly waived for businesses with no more than 500 employees, and

» the 500-employee limitation applies on a per physical location basis.

Franchises: The “affiliation” rules are waived for franchises on the SBA Franchise Directory.

Gambling Businesses: A business that receives legal gaming revenue, and is otherwise eligible under the PPP program, is eligible for PPP loans. Businesses that received illegal gaming revenue are ineligible.

Agricultural Businesses: Agricultural producers, farmers, and ranchers are eligible for PPP loans if: (i) the business has 500 or fewer employees; or (ii) the business fits within the revenue-based sized standard (average annual receipts of $1 million). Additionally, agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets the SBA’s “alternative size standard.” To meet the current “alternative size standard,” the business must meet the following criteria: (a) maximum net worth of not more than $15 million; and (b) average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of the PPP loan application of not more than $5 million. For all of these criteria, the applicant must include its affiliates in its calculations. Additionally, as long as other PPP program eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.

Tax-Exempt Entities: Tax-exempt entities that are qualified under Sections 501(c)(3) or 501(c)(19) of the Internal Revenue Code of 1986 can receive PPP loans.
Additionally, nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code will be treated as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act if the hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in Section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under Section 501(a) of the Internal Revenue Code. The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination.

- **Hedge Funds & Private Equity Firms:** Hedge funds and private equity firms are ineligible to receive a PPP loan.
- **Bankrupt Entities:** If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the PPP loan application or at any time before the PPP loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application, but before the PPP loan is disbursed, it is the applicant’s obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

**Who Can Qualify As A Lender?**

Initially, all existing SBA 7(a) certified lenders (apparently even those designated in “Troubled Condition” or subject to formal enforcement actions) will be given delegated authority to speedily process PPP loans. All other federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions are eligible to participate in this program (as long as they are not designated in “Troubled Condition” or are subject to a formal enforcement action with their primary federal regulator that addresses unsafe or unsound lending practices) upon submission of SBA Form 3506 to delegatedauthority@sba.gov. Once the form is submitted, a lender is automatically approved. Other non-deposit insured financial institutions may be eligible if they meet certain conditions as set forth in the Interim Final Rule issued on April 2, 2020.

**Is There An SBA-Approved Form Of Incumbency Certificate That Should be Used In Connection With The Lender Application?**

No. Lenders can use their own form or FS Form 1014. We recommend that banks use their own forms of incumbency certificate. Please contact us with any questions regarding this requirement for your bank’s lender application.

**What Is The Loan Application Deadline?**

Loans must be originated by June 30, 2020.

**How May The Loan Be Used?**

- Proceeds of a loan may only be used for:
  - “payroll costs” (excluding portion of compensation to an employee in excess of $100,000 per year),
  - costs related to the continuation of group benefits,
» mortgage interest payments,
» rent,
» utilities, and
» interest on any other debt obligations incurred prior to Feb. 15, 2020.

• EIDL (disaster) loans can be refinanced under this program.

What Is The Maximum PPP Loan Size?

The lesser of:

• $10 million, and
• (i) if the borrower was in business between February 15, 2019 – June 30, 2019: 250% of average monthly “payroll costs” during that time period; or (ii) if the borrower was not in business between February 15, 2019 – June 30, 2019: 250% of average monthly “payroll costs” between January 1, 2020 – February 29, 2020. If the borrower took out an EIDL loan between February 15, 2020 – June 30, 2020 and wants to refinance that EIDL loan into a PPP loan, the outstanding amount of the EIDL loan should be added to payroll amounts described above. Under the Cares Act, a seasonal employer may determine its maximum PPP loan amount for purposes of the PPP program by reference to the employer’s average monthly “payroll costs” during the period (a) between February 15, 2019 (or at the election of the eligible borrower, March 1, 2019) – June 30, 2019 or (b) average monthly “payroll costs” during any consecutive 12-week period between May 1, 2019 – September 15, 2019.

The SBA issued an Interim Final Rule on May 13, 2020, providing that a partnership or seasonal employer that would have been eligible for increased PPP loan proceeds as a result of the rule clarifications regarding: (i) partnerships issued on April 14, 2020 and April 24, 2020 or (ii) seasonal employers issued on April 28, 2020, may request an additional disbursement on their existing PPP loan to increase the aggregate amount of their PPP loan to the amount now allowed pursuant to the latest SBA rules. The Interim Final Rule issued on May 13, 2020 suggests that disbursement of such additional PPP funds will be made on an expedited process upon application to the borrower’s bank, and does not require a new PPP loan application.

Can A Single Corporate Group Receive Unlimited PPP Loans?

No. To preserve the limited resources available to the PPP program, businesses that are part of a single corporate group cannot receive more than $20 million of PPP loans in the aggregate. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent. This limitation became effective with respect to any loan that has not yet been fully disbursed as of April 30, 2020.

It is the responsibility of an applicant for a PPP loan to notify the bank if the applicant has applied for or received PPP loans in excess of the $20 million cap, and withdraw or request cancellation of any pending PPP loan application or approved PPP loan that is not in compliance with this limitation. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness.
Can The PPP Loan Be Deferred?

Lenders required to provide complete payment deferment relief, including payment of principal, interest, and fees, for a period of six months.

Can The PPP Loan Be Forgiven?

- **Principal Forgiveness**: The portion of the PPP loan principal used to fund the following costs incurred and payments made during the applicable 8-week “covered period” following the date of PPP loan origination are eligible for complete forgiveness:
  - “payroll costs” (including lost tips), subject to the $100,000 cap,
  - mortgage interest payments,
  - rental payments, and
  - utility payments.

- **Reduction in Forgiveness**: The amount of principal eligible for forgiveness is reduced for borrowers that lay off employees and/or reduce wages as follows:
  - **Headcount Reduction**: Amount subject to forgiveness is subject to proportionate reduction based on reduction in full-time equivalent employees (FTEEs) comparing: (i) average FTEEs during the applicable 8-week “covered period” to (ii) average FTEEs during one of the following periods: (a) February 15, 2019 - June 30, 2019; or (b) January 1, 2020 - February 29, 2020 (borrower elects applicable period). A seasonal employer may determine its reference period by choosing between (x) the period referenced in (a) above, (y) the period referenced in (b) above, or (z) any consecutive 12-week period between May 1, 2019 – September 15, 2019. The reduction in a borrower’s forgivable amount is based on the applicable FTEE reduction percentage, multiplied by the total amount that would otherwise be eligible for forgiveness (i.e., eligible costs, minus excess salary and wage reductions). The FTEE reduction percentage is not multiplied by the PPP loan amount.
  - **Wage Reduction**: The reduction in forgiveness amount does not apply to reductions in salary or wages for employees that were paid at an annualized rate of more than $100,000 during any pay period in 2019. If there were no such reductions in salary or wages (or there were no reductions in excess of 25% for any employee), then there is no reduction in forgiveness amount with respect to salary and wage reductions. Salary/wage reductions for a specific employee are ignored if both: (i) the salary and wages of such employee as of February 15, 2020 is greater than the average salary and wages of such employee during the period between February 15, 2020 – April 26, 2020; and (ii) as of June 30, 2020, the salary and wage level is equal to or greater than the salary and wage level as of February 15, 2020.

- **Re-Hires**: FTEE and wage reductions that occur from February 15, 2020 - April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount, to the extent that the borrower has completely eliminated such FTEE or wage reductions prior to June 30, 2020. Additionally, if the borrower laid off an employee and offered to rehire the same employee, but the employee declined the offer, the borrower’s forgiveness amount will not be reduced; provided, that: (i) the borrower must have made a good faith, written offer of rehire; (ii) the employee’s rejection of that offer must be documented by the borrower; and (iii) the rehire offer must be for the same salary/wage and same number of hours as the employee previously received. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.
Further, a borrower will get FTEE credit during the applicable 8-week covered period, and therefore no reduction in forgiveness amount, for the following employees, but only if the position was not filled by a new employee (i.e., the borrower cannot include two FTEEs for a position that was originally filled by one employee meeting the criteria below):

- Any laid off employee that the borrower made a “good-faith, written offer to rehire” during the applicable 8-week covered period, which such offer was rejected by the employee (per the above discussion);
- Any employee fired for cause during the applicable 8-week covered period;
- Any employee that voluntarily resigned during the applicable 8-week covered period; and
- Any employee that voluntarily requested and received a reduction in hours during the applicable 8-week covered period.

**Documentation:** To obtain forgiveness, the borrower must submit the forgiveness application to a lender with supporting documentation verifying: (i) number of FTEEs and pay rates during the applicable periods, and (ii) payments for covered mortgage interest payments, rent, and utilities (including evidence that its mortgage, rent/lease, and utilities arrangements were in place prior to February 15, 2020, including evidence that such amounts actually were paid). Lender has 60 days to review and make a determination with respect to forgiveness. One of the certifications the borrower must make states that PPP loan forgiveness eligibility and amounts will be evaluated in accordance with the regulations and guidance issued through the date of the borrower’s forgiveness application. Therefore, if the forgiveness rules change after the application is submitted, the borrower may be precluded from taking advantage of any pro-borrower rule changes. Additionally, if the forgiveness rules change prior to the date that the application is submitted in any manner that is adverse to the borrower, the borrower cannot simply rely on earlier guidance to avoid being subject to the new rule changes averse to the borrower.

**Maximum Compensation:** The maximum cash compensation component for any individual employee, owner-employee (including principals and general partners) or self-employed individual during the applicable 8-week covered period is $15,385 (e., pro-rated portion of $100,000).

**Payroll Costs Incurred/Paid:** In determining what payroll costs are eligible for forgiveness, payroll costs must be paid (check distributed or ACH initiated) during the applicable 8-week covered period. However, if the payroll costs are incurred (earned by the employee) during the applicable 8-week covered period, then they will be eligible for forgiveness if the costs are paid on or before the next regular payroll date (even if such payroll date occurs after the expiration of the applicable 8-week covered period).

**Rent Payments:** The forgiveness application explicitly includes rent and lease payments for real and personal property. Therefore, if the borrower leases equipment, then lease payments for that equipment are an eligible cost.

**Utility Payments:** Eligible utilities are electricity, gas, water, transportation, telephone and internet. Eligible utility costs must be paid during the standard 8-week covered period that begins on the date the PPP loan was disbursed (i.e., the borrower cannot use the alternative payroll covered period for determining its eligible utility costs) or incurred during such standard 8-week covered period, and paid on or before the next regular billing date.

**Prepayment of Eligible Costs & Payments:** The forgiveness application explicitly prohibits prepayment of mortgage interest as an eligible cost. However, the application does not have a similar explicit prohibition with respect to prepayment of rent, utilities or payroll costs (though it is unclear whether that omission is intended to suggest such payments are permitted to be included in forgivable amounts).
• **Taxable Income Exclusion**: Amounts forgiven are excluded from the borrower’s taxable income.

**When Does The Eight-Week Covered Period Begin?**

The day of disbursement. However, for purposes of determining eligible payroll costs (but not other eligible costs), a borrower that has a bi-weekly (or more often) payroll period may use an alternative 8-week period that starts on the first day of its first payroll period after the disbursement date of its PPP loan. If a borrower elects to use such alternative covered period for purposes of determining eligible payroll costs, then it must always use that as its applicable covered period for payroll determinations (i.e., it cannot switch back and forth).

**What Is The Loan Maturity?**

Maturity of two years (to the extent any balance remains after forgiveness).

**What Is The Interest Rate?**

Fixed at 1.0%.

**Is There A Prepayment Penalty?**

No penalty for prepayment.

**Is Collateral Required?**

No collateral required.

**What Is The Loan Guarantee?**

No personal guarantee required.

**Are Fees Involved?**

None for the applicant. The SBA waives all SBA guaranty fees, including the upfront and annual servicing fees.

**Are There Other Credit Requirements?**

Borrowers are not required to demonstrate that they are unable to obtain credit elsewhere.
Who Is Eligible For The Employee Retention Credit?

Borrowers who receive a loan under the PPP program are not eligible for the Employee Retention Credit. However, a borrower that applied for a PPP loan, received payment and repays the PPP loan by the safe harbor deadline (i.e., May 18, 2020) will be treated as though the borrower had not received the PPP loan for purposes of the Employee Retention Credit. Therefore, such a borrower will be eligible for the Employee Retention Credit if it is otherwise eligible for the credit.

When To Apply?

April 3, 2020 for small businesses and sole proprietors, and April 10, 2020 for the self-employed and independent contractors.

How To Apply?

The SBA made an application form (SBA Form 2483) available on its website on March 31, 2020, which can be found here: https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form. Please note Form 2483 may be updated in the future.

Can Banks Turn Away Non-Bank Customer PPP Loan Applications?

Yes, if a bank is unable to timely process their application. Banks are processing extremely high volumes of PPP loan applications. Because they can rely on existing bank customers’ Customer Due Diligence (CDD), banks can process existing customer applications quicker. Non-bank customers may therefore find it quicker to obtain a PPP loan at their existing bank. Thus, if a bank is unable to timely process non-customer PPP loan applications, it should recommend that those applicants apply at their existing banks. Additionally, the fair lending requirements in Regulation B do not expressly prohibit a bank from limiting PPP loans or prioritizing applications from existing bank customers. Nevertheless, if a bank decides to limit or prioritize PPP loans in that manner, it should create appropriate policies vetted by its compliance and legal teams. Banks should be mindful of these issues and others presented in our client alert on the subject: Mitigating Risk From PPP Loans.

If A PPP Applicant Does Not Qualify For A PPP Loan, Or Its Application Is Otherwise Denied, Does The Bank Have To Send The Applicant An Adverse Action Notice?

Yes. The PPP does not abrogate Regulation B’s requirements for adverse action notices, including in situations where the bank denies the application without submitting it to the SBA.

However, the CFPB has issued additional guidance regarding Regulation B’s requirements with respect to PPP loans. Pursuant to this guidance, a PPP loan application submitted to the SBA is not deemed a “completed application,” and the notice time period with respect to such PPP loan application does not begin, under Regulation B.
until the bank receives a loan number for such PPP loan from the SBA or a response from the SBA regarding the availability of funds under the PPP program. Additionally, if the bank has submitted a PPP loan application to the SBA, but has not received a loan number or a response about the availability of funds under the PPP program from the SBA, and the PPP loan application is otherwise complete, the bank cannot deny the application based on incompleteness, or provide a notice of incompleteness, because a loan number or response from the SBA is not information that an applicant can provide to the bank. Like other types of loans, under Regulation B, a PPP loan application can only be denied for incompleteness if the application is incomplete regarding information that the applicant can provide and the bank lacks sufficient data to make a credit decision.

Further, if an applicant does not meet the requirements for a PPP loan, or a bank is otherwise unable to process a PPP loan, the bank should inform the applicant in writing as soon as possible to mitigate potential reputational risk and legal claims from the applicant.

**Does A PPP Application Need To Be Updated If SBA Form 2483 Is Revised?**

No, but unprocessed applications may be revised as the PPP requirements are revised.

**What If An Application Was Filed Or Approved When Certain, Applicable Guidance Was Not Available? Do I Need To Take Any Action Based On The Updated Guidance That Was Provided After The Application Was Submitted?**

No. Borrowers and banks may rely on the laws, rules, and guidance available at the time of the relevant PPP loan application. However, borrowers whose previously submitted PPP loan applications have not yet been processed may revise their applications based on clarifications reflected in updated guidance.

**What Beneficial Ownership Information Does A Bank Need To Collect For 20% Or Greater Owners Of An Applicant For A PPP Loan To Satisfy The Requirements Of The Bank Secrecy Act (BSA)?**

For a bank’s existing customers, none. If the bank previously verified the necessary information, the bank does not need to re-verify the information. This is so even if the bank has not yet collected such beneficial ownership information on an existing customer (unless the bank’s BSA policy dictates otherwise).

For a bank’s new customers, the bank should, at a minimum, collect the following information from all natural persons with a 20% or greater ownership stake in the applicant’s business: (i) owner name and title, (ii) ownership percentage, (iii) TIN, (iv) address, and (v) date of birth. If any ownership interest of 20% or greater in the applicant’s business belongs to a business or other legal entity, banks will need to collect appropriate beneficial ownership information for owners of that entity. If your bank’s BSA policy dictates that additional Customer Due Diligence (CDD)
should be conducted, the bank should follow those policies and collect such CDD.

How Does A Bank Withdraw A Previously Submitted & Approved PPP Loan In The SBA E-Tran System?

We understand that a bank may be able to withdraw a previously approved PPP loan in the SBA E-Tran system by removing the application by (i) going to the “Servicing” section, (ii) accessing the “1502 Info” screen and (iii) selecting “Voluntary Termination.” If successful, the application will be erased, and if the applicant applies again, the applicant will be submitting a new application and will not subject to the 10-day funding deadline tied to its originally submitted application, whether at the original lender or at another lender.

What If An Eligible Borrower Contracts With A Third-Party Payer, Such As A Payroll Provider Or A Professional Employer Organization (PEO), To Process Payroll & Report Payroll Taxes?

SBA recognizes that eligible borrowers that use PEOs, or similar payroll providers, are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower’s employees will be considered acceptable PPP loan payroll documentation. Relevant information from (i) a Schedule R (Form 941), (ii) the Allocation Schedule for Aggregate Form 941 Filers that is attached to the PEO’s or other payroll provider’s Form 941, or (iii) the Employer’s Quarterly Federal Tax Return should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes being reported to the IRS by the payroll provider. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower’s payroll provider or PEO.

What If A Borrower Pledged Guilty To A Felony Crime A Very Long Time Ago? Is It Still Eligible For The PPP?

Yes. Businesses are only ineligible if an owner of 20% or more of the equity of the applicant is presently: (i) incarcerated, (ii) on probation, (iii) on parole; or (iv) subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been (a) convicted; (b) pleaded guilty; (c) pleaded nolo contendere; (d) been placed on pretrial diversion; or (e) been placed on any form of parole or probation (including probation before judgment).

Can A Lender Use Its Own Portal To Accept PPP Loan Applications?

Yes. A lender may use its own online systems and its own form if it asks for the same information requested in SBA Form 2483. Lenders are still required to send the data to the SBA using the SBA’s ETRAN Servicing Account.
Who Can Sign A PPP SBA Form 2483 On Behalf Of A Borrower?

Only an authorized representative of the borrower may sign on its behalf. An individual’s signature as an “Authorized Representative of Applicant” is a representation to the lender, and to the SBA, that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant’s equity, contained in the Borrower Application Form. Accordingly, lenders may rely on that representation and accept a single individual’s signature on that basis.

Can Lenders Use Scanned Copies of Documents, Or E-signatures Or E-consents Permitted By The E-SIGN Act?

Yes. All PPP lenders may accept scanned copies of signed PPP loan applications and documents containing the information and certifications required by SBA Form 2483 and the promissory note being used for the applicant’s PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the E-SIGN Act. If obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure that the proper party has executed the document. This guidance does not supersede signature requirements imposed by other applicable law, including by the lender’s primary federal regulator.

Can A Borrower Refinance An Existing SBA Loan With A PPP Loan?

There are currently no written restrictions that prevent a borrower from refinancing an existing SBA loan with a PPP loan, but it may affect whether the PPP loan can be forgiven and could affect the borrower’s covenants under the existing SBA loan. Further SBA guidance may clarify.

Can A Borrower Take Multiple Draws From A PPP Loan?

No, the proceeds from the PPP loan must be disbursed in full.

Are There Any Time Limits On Disbursing A PPP Loan Once It Is Assigned A Loan Number By the SBA?

Starting on April 28, 2020, a bank must disburse a PPP loan within 10 calendar days after it is assigned a loan number by the SBA. A bank is not responsible for delays in disbursement attributable to a borrower’s failure to timely provide required loan documentation, such as a signed promissory note. If the borrower does not provide all required documentation within 20 days of SBA loan number assignment, the bank may cancel the PPP loan.

When Must A Bank Electronically Submit An SBA Form 1502?

A bank must electronically upload SBA Form 1502 information by the later of (i) May 29, 2020 or (ii) 10 calendar days after disbursement or cancellation of the PPP loan. The SBA will began accepting SBA Form 1502 reports on fully disbursed or cancelled PPP loans on May 22, 2020.
What Are The Ongoing 1502 Reporting Requirements For PPP Loans?

In addition to filing the initial SBA Form 1502 pursuant to the deadlines stated above, after submitting the initial SBA Form 1502 report, banks must submit PPP loan information to the SBA on a monthly basis.

Banks must provide monthly 1502 reports that include loan status information for their PPP loans regardless of whether the borrower made a payment in that month. Banks must continue reporting on a PPP loan until the bank notifies the SBA that the PPP loan has been paid in full. A PPP loan should not be reported as “paid in full” only because it has been transferred to another bank.

After PPP loan forgiveness, if no loan balance remains, the bank must report the PPP loan as paid in full on the next SBA Form 1502 report that it files. If a loan balance remains after PPP loan forgiveness, the bank must report the reduction in the loan balance for the forgiveness amount on the next SBA Form 1502 report that it files, and must service the remaining balance of the PPP loan in accordance with PPP program requirements.

When A PPP Loan Is Sold, Which Bank Is Responsible For 1502 Reporting To The SBA?

When a bank sells all of its interest in a PPP loan to another participating bank, in bulk or individually, the SBA will send the processing fee to the bank that originated such PPP loan. The bank making the disbursement is responsible for completing and submitting the initial SBA Form 1502 report regarding PPP loan disbursement. For banks that already have sold PPP loans that they originated, the SBA will be contacting such banks to obtain ACH credit information. The purchasing bank will be the party responsible to the SBA with respect to all servicing actions, including monthly 1502 reporting and requests for advance purchases and PPP loan forgiveness, and will be the party eligible for the guaranty of a PPP loan.

Can Banks Report PPP Loan Disbursements, Cancellations & Voluntarily Terminations On The Same SBA Form 1502?

Yes. Banks will be able to report PPP loan disbursements, cancelled PPP loans and voluntarily terminated PPP loans on the same SBA Form 1502 report. Banks should use the instructions for reporting on PPP loan disbursements provided in the SBA’s guidance, which can be found at https://www.sba.gov/sites/default/files/2020-05/5000-20028.pdf?utm_campaign=NEWSBYTES-20200521-Special&utm_medium=email&utm_source=Eloqua. Additionally, banks should refer to the Fiscal Transfer Agent’s (FTA) website, at https://colsonservices.bnymellon.com/, for forthcoming instructions for reporting cancelled and voluntarily terminated PPP loans using an SBA Form 1502. The SBA is developing the process for reporting cancelled and voluntarily terminated PPP loans using an SBA Form 1502, and will post instructions on the FTA’s website when that process has been finalized. Finally, banks must use separate SBA Form 1502 filings for PPP loans and regular 7(a) loans.
What Confirmation Must The Bank Make In Connection With Filing SBA Form 1502 & Before Receiving PPP Processing Fees To Which It is Entitled?

Banks must make a one-time confirmation in the FTA Lender portal before the SBA will disburse PPP processing fees to the bank. Banks will be required to confirm that: (i) all PPP loans included in the report were fully disbursed to the borrowers on the disbursement dates entered, and in the loan amounts entered in the report; (ii) the bank will make no further disbursements on the PPP loans included in the report; (iii) all information in the report is true and correct; and (iv) the report has been submitted by an authorized employee or agent of the bank acting within the scope of the bank’s authority, and the bank acknowledges responsibility for all entries and certifications made on its behalf.

Can Banks Make PPP Loans To Bank Insiders?

Yes, under certain circumstances. The SBA issued written guidance on April 14, 2020 that eligible businesses owned by outside bank directors and shareholders who own less than a 30% equity interest in their financial institution may obtain PPP loans from their banks. Officers, key employees, and shareholders who own a 30% or more equity interest would not be eligible to obtain PPP loans from their banks, but could obtain a PPP loan from another approved lender.

The SBA’s guidance also reminds banks that the “Authorized Lender Official” for each PPP loan is subject to the limitations described in the Lender Application Form, which provides in relevant part: “Neither the undersigned Authorized Lender Official, nor such individual’s spouse or children, has a financial interest in the Applicant [i.e., the Borrower].”

The SBA further stated that favoritism in processing time or prioritization is prohibited; and that banks should follow their own policies, as well as applicable federal and state regulations, such as Regulation O, in making PPP loans to eligible bank insiders. The Federal Reserve issued an Interim Final Rule, effective as of April 22, 2020, exempting certain PPP loans from the requirements of Section 22(h) of the Federal Reserve Act and the corresponding provisions of Regulation O. Under the Federal Reserve’s Interim Final Rule, for purposes of Section 22(h) of the Federal Reserve Act and the corresponding provisions of Regulation O, “extensions of credit” to insiders (other than executive officers) do not include PPP loans made between February 15, 2020 and June 30, 2020 that are not prohibited by the SBA lending restrictions regarding PPP loans to insiders. PPP loans to insiders that do not meet applicable SBA lending requirements do not qualify for the exception contained in the Federal Reserve’s Interim Final Rule. We also recommend that if a bank is considering making a PPP loan to a bank insider, it should follow its own insider lending policies, and carefully document the application process to help avoid future potential regulatory scrutiny.

Although this is a positive development for banks, we nevertheless urge caution in reviewing, approving, and documenting any PPP loans to your bank’s eligible insiders. Additionally, there remains uncertainty surrounding how this guidance could impact an outside director who serves as a bank’s Chairman of the Board.
Can A Bank Itself Obtain A PPP Loan?

No. As set forth in the Interim Final Rule, a bank is ineligible to obtain a PPP. It is unclear whether bank holding companies are ineligible as well. Further SBA guidance may clarify.

What FinCEN Rule Customer Due Diligence (CDD) Does A Bank Have to Perform for Existing Customers?

No re-verification is needed for existing bank customers. Additionally, if your bank has not yet collected beneficial ownership information on existing customers, you do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise required by your BSA policies and procedures.

Can A Bank Pledge PPP Loans As Collateral Under The Federal Reserve Discount Window?

Yes, as part of the “PPPL Facility” discussed below.

Did Treasury Create A Liquidity Facility For Banks To Provide PPP Loans?

Yes. The Federal Reserve authorized the Federal Reserve Banks to establish the Paycheck Protection Program Liquidity Facility (the PPPL Facility). The PPPL Facility allows each of the Federal Reserve Banks to extend non-recourse loans to all PPP lenders approved by the SBA, to fund loans made by such lenders under the PPP program. SBA-qualified PPP lenders include banks, credit unions, Community Development Financial Institutions, members of the Farm Credit System, small business lending companies licensed by the SBA, and some financial technology firms.

Additionally, eligible borrowers will be able to pledge whole PPP loans that they have purchased as collateral to the PPPL Facility. An institution that pledges a purchased PPP loan will need to provide the Federal Reserve Bank with documentation from the SBA demonstrating that the pledging institution is the beneficiary of the SBA guarantee for such PPP loan. PPPL Facility loans pledged to the Federal Reserve as collateral will be excluded from the calculation of a pledging bank's regulatory capital. On April 14, 2020, the SBA clarified that agency requirements for loans pledged for borrowings at a Federal Reserve Bank, or advances from a Federal Home Loan Bank, do not apply to PPP loans.

The Federal Reserve also announced plans for monthly disclosures of participants in its lending facilities backed by funds authorized by the CARES Act, which includes the PPPL Facility. The Federal Reserve said it would report the: (i) names and details of participants in each facility; (ii) amounts borrowed; (iii) interest rates charged; (iv) value of pledged collateral; and (v) overall costs, revenues, and fees for each facility.
Will FHLBs Accept PPP Loans As Collateral For FHLB Advances?

The Federal Housing Finance Agency confirmed that Federal Home Loan Banks may accept PPP loans as collateral when making advances to their member banks. This move is intended to provide additional liquidity for small banks in particular, as they work to meet the needs of small businesses in their communities.

FHLBs will take a cut of at least 10% on PPP loans accepted as collateral, which will reduce the overall value of such collateral. Additionally, member banks pledging PPP loans as collateral must have a CAMELS rating of 3 or better, or a member credit ranking in the top 60% of FHLB’s member rating systems. FHLB member banks may pledge a maximum of $5 billion in PPP loans in collateral to their FHLB.

Will Legal Lending Limits Apply To PPP Loans?

It depends. Generally, the portion of a loan guaranteed by a U.S. government agency is excluded when calculating legal lending limits. We recommend that banks review applicable federal or state laws and guidance (depending on their charter) regarding legal lending limitations and the PPP program to confirm the most accurate method for determining legal lending limits applicable to them, as lending limits can differ by jurisdiction. For example, under Illinois law for state-chartered banks, loans that are guaranteed by a U.S. government agency are exempted from the legal lending limits. However, Illinois has issued guidance that it will not consider a PPP loan exempt from a state bank’s legal lending limit just because the bank designates it as a PPP loan if such PPP loan is disqualified from the PPP program guaranty. However, in the case of a given PPP loan, if a PPP loan is disqualified from the PPP program guaranty, but it is determined that the state bank exercised reasonable due diligence to ensure that the PPP loan met the PPP program requirements, such PPP loan will not be cited as a basis for a legal lending limit violation; provided, that the loan amount exceeding the legal lending limit will be deemed non-conforming, and the state bank must take steps to conform with the lending limit as quickly as safe and sound banking practice permits.

Are There Revenue Restrictions For Banks On PPP Loans?

None right now, but further SBA guidance may clarify.

When Will Banks Be Reimbursed For Processing PPP Loans?

Once a bank successfully reports to the SBA that a PPP loan has been fully disbursed, the SBA will initiate the process of paying the processing fee that the bank is eligible to receive. Banks need to use SBA Form 1502 to report fully disbursed PPP loans to the SBA. On the third business day after receiving SBA Form 1502, and provided that the ACH information and the one-time confirmation (described above) have been provided by the bank, the SBA will initiate the process for payment of the processing fee to the bank.

To receive the processing fee(s) it is owed, the bank must: (i) have provided ACH credit information for an account owned by the bank; and (ii) make the one-time confirmation (described above).
Banks should supply the appropriate ACH information in the bank's Fiscal Transfer Agent (FTA) Lender portal. Before banks can receive a PPP processing fee, or begin monthly PPP loan reporting, they must establish an Lender portal account with the FTA to access the 1502 Dashboard. Existing SBA banks with SBA Form 750 agreements can access the 1502 Dashboard with their current FTA Lender portal account. Both: (i) banks who do not already have an account with the FTA and (ii) Lender Service Providers (LSPs), who are providing services for banks under a reviewed LSP agreement, and who do not already have an account with the FTA, can enroll by sending an email to enrollment@colsonservices.com. Banks and LSPs will not be allowed to share login credentials, as such credentials are issued at an individual user level and cannot be shared among users.

How Will The SBA Disburse The Processing Fee To Banks?

The SBA will make PPP loan processing fee payments to banks using the Demand Deposit Account ACH information supplied by banks on the Fiscal Transfer Agent's website. The SBA will make a payment for each PPP loan on an individual basis, so that banks can match the received processing fee payment with the corresponding PPP loan.

How Will Banks Be Compensated For Processing PPP Loans?

Banks may not collect any fees from the applicant. Banks will receive processing fees from the SBA based on the following:

- PPP loans of up to $350,000: 5%;
- PPP loans greater than $350,000 and less than $2 million: 3%; and
- PPP loans of at least $2 million: 1%.

When Won’t A Bank Receive A Processing Fee?

A bank will not receive a processing fee:

- prior to full disbursement of the PPP loan;
- if the PPP loan is cancelled before disbursement;
- if the PPP loan is cancelled or voluntarily terminated and repaid after disbursement, but before the borrower safe harbor date (i.e., May 18, 2020), including if a borrower repays the PPP loan proceeds to conform to the borrower’s certification regarding the necessity of its PPP loan request; or
- if the PPP loan is cancelled, terminated, or repaid after disbursement (and after the borrower certification safe harbor date of May 18, 2020) because the SBA conducted a loan review and determined that the borrower was ineligible for a PPP loan.

Will The SBA Review The Payment Of Bank Processing Fees?

The SBA may review the payment of processing fees at the time of forgiveness, or at any other time the SBA deems appropriate. If the SBA determines that the processing fee was paid erroneously or in the incorrect amount, the bank is responsible for repaying the processing fee to the SBA.
Are Bank Processing Fees Subject To Clawback If The SBA Determines That A Borrower Is Ineligible?

Yes. For any SBA-reviewed PPP loan, if within one year after the PPP loan was disbursed, the SBA determines that the borrower was ineligible, the SBA will seek repayment of the processing fee by the bank that originated the PPP loan. However, the SBA's determination of borrower ineligibility will have no effect on the SBA's guaranty of such PPP loan if the bank has complied with its obligations, and the document collection and retention requirements described in the lender application form.

Are Bank Processing Fees Subject To Clawback If A Bank Has Not Fulfilled Its Obligations Under PPP Program Regulations?

Yes. If a bank fails to satisfy the requirements applicable to banks under the PPP program, the SBA will seek repayment of the processing fee by the bank that originated the PPP loan, and may determine that such PPP loan is not eligible for a guaranty. However, as described above, even in cases where processing fees are subject to clawback, the SBA's guaranty will not be affected if the bank has complied with these obligations.

Is A Bank Responsible For The Actions Of Its Agent Or LSP?

If the bank authorizes an Agent or Lender Service Provider (as those terms are defined in 13 C.F.R. § 103.1) to submit any information or make any entries or certifications on the bank's behalf in connection with the bank's submission of SBA Form 1502 through the 1502 Dashboard or through any other method of 1502 reporting, the bank acknowledges that the Agent or LSP is acting within the scope of the bank's authority, and the bank acknowledges responsibility for all information submitted and entries and certifications made on its behalf by such agents or LSPs.

Is A Bank Required To Pay An Agent Used To Prepare PPP Loan Applications?

No, although we note that there is at least one pending lawsuit that alleges otherwise. Under SBA regulations, unless the bank contracts directly with the agent, and follows the applicable SBA rules, as discussed in the FAQ below, an agent cannot receive a fee from a bank. There is some confusion regarding when a bank is required to pay an agent for preparing a PPP loan application. Applicants may believe that their agents, who are often the applicant's accountants or other professionals, are entitled to an agent fee under the PPP and may ask the bank to pay that fee. However, as discussed below, the agent must be in privity of contract with the bank and follow applicable SBA procedures. Additionally, the bank already may be utilizing a previously contracted agent on the bank's own behalf. In any case, to limit risk, the bank should have the applicant acknowledge in writing that the bank is not compensating any of the applicant's agents.
Who Can Be An Agent for A PPP Loan?

An agent is an authorized representative of the applicant and can be:

- 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.

How Much Can A Bank Compensate An Agent?

The fees that an agent may receive cannot exceed the following:

- For loans up to $350,000, 1% of the principal amount of the loan;
- For loans of more than $350,000 and less than $2,000,000, 0.5% of the principal amount of the loan; and
- For loans $2,000,000 or more, 0.25% of the principal amount of the loan.

The above percentages are not flat rates, and a bank can require a detailed billing statement from the agent. In connection with an agent’s engagement regarding the PPP program, the agent’s appointment is required to be documented on SBA Form 159 because the Small Business Act requires business owners to “certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons.” 15 U.S.C. § 642.

Further, other SBA regulations and operating guidelines require that an applicant disclose: (i) the identity of any agents assisting in the application; and (ii) any fees paid to such agents.

Is There An SBA-Approved Promissory Note Or Loan Agreement For PPP Loans?

Lenders may use their own promissory note, and include any terms and conditions, including those relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rule and guidance, and SBA Form 2484. Lenders may also use the SBA form of promissory note (Form 147), but that form of promissory note does not contain essential protections for banks, such as referencing and incorporating the terms of the PPP, a jury waiver provision, and other customary release and waiver provisions designed to protect lenders. Accordingly we recommend that banks review their form of promissory note that they plan to use for PPP purposes to ensure that such forms contain such protective provisions to help insulate them from potential lender liability issues. We discuss this issue in our client alert on the subject: PPP Promissory Note Issues.
Is A Bank Required To Use A Separate SBA Form To Issue A PPP Loan?

No. A bank does not need a separate SBA Authorization for the SBA to guarantee a PPP loan.

Do Lenders Have To Issue An IRS Form 1099-C (Cancellation Of Debt) After A PPP Loan Is Forgiven?

It is unclear whether lenders will have to issue an IRS Form 1099-C if and when a PPP loan is forgiven. We expect to see further guidance from the IRS and the SBA on this issue in next few weeks.

What Are The Underwriting Requirements For A PPP Loan?

As set forth in the Interim Final Rule, there are four underwriting requirements:

- Confirm receipt of the applicant’s certifications on the applicant’s SBA Form 2483.
- Confirm receipt of information from the applicant that on or before February 15, 2020, the applicant had employees on whose behalf the applicant paid payroll and withholding taxes.
- Confirm the dollar amount of average monthly payroll costs for the preceding year by reviewing documentation submitted with the applicant’s application.
- Follow applicable BSA requirements. FinCEN announced on April 3, 2020 that “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.” See https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-provides-further-information-financial.

What Does a Bank Need To Review In A Borrower’s PPP Loan Forgiveness Application?

For all PPP Loan Forgiveness Applications, each bank should confirm:

- Receipt of the borrower certifications contained in the Loan Forgiveness Application Form;
- Receipt of the documentation borrowers must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the Loan Forgiveness Application Form;
- The calculations on the borrower’s Loan Forgiveness Application, including the dollar amount of the (i) cash compensation, non-cash compensation, and compensation to owners claimed on lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (ii) business mortgage interest payments, business rent or lease payments, and business utility payments claimed on lines 2, 3, and 4 on the Loan Forgiveness Calculation Form, which the bank should do by reviewing the documentation submitted with the Loan Forgiveness Application; and
- That the borrower made the calculation on line 10 of the Loan Forgiveness Calculation Form correctly, by dividing the borrower’s eligible payroll costs claimed on line 1 by 0.75.
Can A Bank Rely On Borrower Documentation For PPP Loan Forgiveness?

Yes. Further, the SBA will hold harmless any bank that relies on the borrower's documents and the borrower's attestation. Nevertheless, banks should always utilize safe and sound lending practices.

Providing an accurate calculation of the PPP loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application itself. Banks are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for PPP loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented on reports from such recognized sources, more extensive review of calculations and data would be appropriate. The borrower will not receive forgiveness without submitting all required documentation to the bank.

Generally, banks may rely on various borrower representations regarding PPP loan forgiveness. However, if the bank identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the bank should work with the borrower to remedy the issue(s). The bank does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for PPP loan forgiveness, and attests that it accurately verified the payments for eligible costs.

What Is The Timeline For A Bank’s Decision On A PPP Loan Forgiveness Application?

The bank must issue a decision to the SBA on a PPP loan forgiveness application not later than 60 days after receipt of a complete PPP loan forgiveness application from the borrower. That decision may take the form of: (i) an approval (in whole or in part); (ii) a denial; or (iii) (if directed by the SBA) a denial without prejudice due to a pending SBA review of the PPP loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the bank reconsider its application for PPP loan forgiveness, unless the SBA has determined that the borrower is ineligible for a PPP loan.

When the bank issues its decision to the SBA approving the application (in whole or in part), it must include: (i) the PPP Loan Forgiveness Calculation Form; (ii) PPP Schedule A; and (iii) the PPP Borrower Demographic Information Form (if it has been submitted to the bank). The bank must confirm that the information it provides to the SBA accurately reflects its records for the PPP loan, and that the bank has made its decision in accordance with the bank's PPP loan forgiveness review requirements. If the bank determines that, under the statute and applicable regulations, the borrower is entitled to forgiveness of some or all of the PPP loan amount it has applied for, the bank must request payment from the SBA at the time it issues its decision to the SBA. The SBA will, subject to any SBA review of the PPP loan or PPP loan application, remit the appropriate forgiveness amount to the bank, plus any interest accrued through the date of payment, not later than 90 days after the bank issues its decision to the SBA. If applicable, the SBA will deduct EIDL advance amounts from the forgiveness amount remitted to the bank, as required by the CARES Act.
If a bank issues its decision to the SBA determining that the borrower is not entitled to forgiveness in any amount, the bank must provide the SBA with the reason for its denial, together with: (i) the PPP Loan Forgiveness Calculation Form; (ii) PPP Schedule A; and (iii) the PPP Borrower Demographic Information Form (if it has been submitted to the bank). The bank must confirm that the information it provides to the SBA accurately reflects its records for the PPP loan, and that the bank has made its decision in accordance with the bank’s PPP loan forgiveness review requirements. The bank also must notify the borrower in writing that the bank has issued a decision to the SBA denying the PPP loan forgiveness application. The SBA reserves the right to review the bank’s decision regarding forgiveness in its sole discretion.

Can A Bank Rely On Borrower Calculations In A PPP Loan Application?

Yes, but banks are expected to perform a good faith review of a borrower’s calculations in reasonable time. A bank’s diligence should be guided by the quality of the documents provided by the borrower. This suggest a higher standard of diligence than the original SBA guidance that banks do not need to verify borrower-submitted documents. Accordingly, banks should always utilize safe and sound lending practices in review of borrower PPP applications.

Can A Bank Rely On Borrower Affiliation Certifications Under 13 C.F.R. § 121.301(f) In A PPP Loan Application?

Yes, banks are not required to make an independent determination regarding the applicability of affiliation rules under 13 C.F.R. § 121.301(f). Borrowers are completely responsible for making such determinations.

Can A Bank Rely On Borrower Certifications Regarding A Borrower’s Financial Need In A PPP Loan Application?

Banks may rely on a borrower’s certification regarding the necessity of the PPP loan request.

Can A Bank Rely On A Borrower’s Representation Regarding A Borrower’s Compliance With The $20 Million Per Corporate Borrower Limit?

Banks may rely on a borrower’s representation concerning its compliance with this limitation.

What Are the Servicing Requirements For A PPP Loan?

None right now, but further SBA guidance may clarify.
Will The SBA Review Individual PPP Loan Files?

Yes. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all PPP loans in excess of $2 million, in addition to other PPP loans as appropriate, following the bank’s submission of the borrower’s loan forgiveness application.

If the SBA determines that a borrower lacked an adequate basis for the required certification regarding financial need, the SBA will seek repayment of the outstanding PPP loan balance and will inform the bank that the borrower is not eligible for PPP loan forgiveness. If the borrower repays the PPP loan after receiving notification from the SBA, the SBA will not pursue administrative enforcement or referrals to other agencies based on its determination regarding the certification concerning financial need.

The outcome of the SBA’s review of PPP loan files will not affect the SBA’s guarantee of any PPP loan for which the bank complied with its obligations under the PPP program.

Will The SBA Review Banks’ PPP Loan Forgiveness Submissions?

The SBA may begin a review of any PPP loan, including with respect to forgiveness, of any size at any time in the SBA’s discretion. Additionally, where a bank has submitted a PPP loan forgiveness rejection decision to the SBA and provided the required notice of such decision to the borrower, the borrower may, within 30 days of receiving such notice from the bank, request that the SBA review the bank’s decision regarding its PPP loan forgiveness application.

What Should A Bank Do If It Receives Notice That The SBA Is Reviewing Its PPP Loan Forgiveness Submission?

If the SBA undertakes a review of a PPP loan, including with respect to forgiveness, the SBA will notify the bank in writing and the bank must notify the borrower in writing within five business days of receipt of such notice from the SBA. In addition, within five business days of receipt of such notice, the bank should transmit to the SBA electronic copies of the following:

- The Borrower Application Form (SBA Form 2483 or the bank’s equivalent form) and all supporting documentation provided by the borrower;
- The Loan Forgiveness Application (SBA Form 3508 or the bank’s equivalent form), and all supporting documentation provided by the borrower (if the bank has received such application). If the bank receives such application after it receives notice that the SBA has commenced a PPP loan review, the bank should transmit electronic copies of the application, and all supporting documentation provided by the borrower, to the SBA within five business days of receipt from the borrower. The bank must also request that the borrower provide a copy of the Schedule A Worksheet to the Loan Forgiveness Application, and the bank must submit the worksheet to the SBA within 5 business days of receipt from the borrower;
- A signed and certified transcript of account;
- A copy of the executed note evidencing the PPP loan; and
Can A Bank Sell A Participation Interest In A PPP Loan?

Yes. Banks may sell participating interests in PPP loans to other PPP participating lenders in accordance with 13 C.F. R. § 120.432(b). Banks may sell up to 100% of the principal balance of a PPP loan, and the SBA’s prior written consent is not required. Banks may only sell to other lenders that have a signed SBA Form 750, SBA Form 3506, or SBA Form 3507. The selling bank must continue to service the PPP loan and must also provide SBA’s Office of Credit Risk Management (OCRM) with prior written notice of any such participating interest sale via email: PPPLoanParticipation@sba.gov

Can A Bank Sell A PPP Loan?

Yes. PPP loans can be sold into the secondary market at any time after the loan amount for the PPP loan being sold has been fully disbursed. Such a sale does not require SBA approval, and the SBA will not collect any fee for any guarantee sold into the secondary market. PPP loans sold into the secondary market are 100% SBA guaranteed and may be sold at a premium or a discount to par value.

Will The SBA Purchase PPP Loans In Advance?

Yes, a lender can request that the SBA purchase the expected forgiveness amount as the end of week seven of the covered period. The expected forgiveness amount is the amount of PPP loan principal that the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the applicable 8-week covered period. At least 75% of the expected forgiveness amount will be for payroll costs. The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of PPP loans. The SBA will purchase the expected forgiveness amount of the PPP loans within 15 days of the date on which the SBA receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable. The SBA will issue additional procedures on the process for advance purchase of PPP loans.

How Does A Bank Report A Fully Disbursed or Cancelled PPP Loan?

Banks must report any PPP loans that have been fully disbursed or cancelled to the SBA via SBA Form 1502. Cancelled PPP loans can also be reported through E-Tran Servicing. If a PPP loan is reported as cancelled on E-Tran Servicing, it should not be reported again on SBA Form 1502. Banks must also report PPP loans that are cancelled before disbursement, or that have been cancelled or voluntarily terminated and repaid after disbursement. As of May 22, 2020, banks can do so in E-Tran Servicing or through their SBA Form 1502 reporting. The bank will have until 5:00 PM Eastern Time on the second business day after submitting SBA Form 1502 to correct any errors within the 1502 Dashboard.
CARES Act Paycheck Protection Program FAQs


Footnotes

1. The Paycheck Protection Program was added by Section 1102 of the CARES Act as Subsection (36) of Section 7(a) of the Small Business Act. We expect the SBA to provide initial regulations within 15 days of enactment and subsequent guidance to follow, which could modify the information provided herein. The information provided herein is intended to be a summary only and reference should be made to the language of the actual statutes, regulations, and SBA guidance.

2. The “small business concern” test is based on industry-specific maximum annual revenue and/or employees. The test applies both to the individual company and its affiliates (using a very broad affiliate test). A complete discussion of the “small business concern” test and affiliation rules can be found at: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7780ee089107f59ef3f78b938e2282b7&r=PART&n=13y1.0.1.1.17

3. A complete list of industries classified under NAICS code 72 can be found here: https://www.naics.com/six-digit-naics/?code=72

4. “Payroll costs” include: (a) employee compensation, including (i) salary, wage, (ii) tips, (iii) vacation, parental, family medical or sick leave, (iv) allowance for dismissal or separation, (v) payments for the maintenance of health care benefits (including insurance premiums), (vi) payment of retirement benefits, and (vii) payroll taxes, and (b) payments of a sole proprietor or independent contractor, in an amount not more than $100,000 per year (as prorated for the covered period); but specifically exclude (w) payments to an individual employee exceeding $100,000 (as prorated for the covered period), (x) Federal employment and income tax obligations, (y) compensation to employees whose principal residence is outside of the U.S. and (z) qualified sick and family leave for which a credit is allowed under the Families First Coronavirus Response Act.