



SBA ISSUES GUIDANCE ON PAYCHECK PROTECTION PROGRAM

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On April 7, 2020, the SBA issued a detailed list of its responses to frequently asked questions (FAQs) raised relating to the issuance of loans under the Paycheck Protection Program (PPP) authorized under the CARES Act. The entire FAQ sheet can be found here:

Some of the more significant clarifications include:

- Businesses do not need to qualify as a “small business concern,” as defined in section 3 of the Small Business Act in order to be eligible to receive a PPP loan. Specifically, the FAQ states: “a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates.” (emphasis added).
- Lenders are not required to make an independent determination regarding the applicability of affiliation rules. Rather, borrowers must certify that they are eligible on the application form. More guidance on interpretation of the affiliation rules can be found here: <https://www.sba.gov/document/support--affiliation-rules-paycheck-protection-program>
- Likewise, lenders are not required to conduct an extensive review of a borrower’s calculations of payroll costs. They are, however, “expected to perform a good faith review, in a reasonable time, of the borrower’s calculations and supporting documents.” Additionally, “[i]f the lender identifies errors in the borrower’s calculation or material lack of substantiation in the borrower’s supporting document, the lender should work with the borrower to remedy the issue.”
- The exclusion of compensation in excess of \$100,000 annually, when calculating payroll costs, only applies to cash compensation and not to other employee benefits of monetary value. Thus, payroll costs computations may include non-cash benefits, even if the underlying cash compensation to that

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employee exceeds \$100,000 annually. Non-cash benefits include:

- Employer contributions to defined-benefit or defined-contribution retirement plans;
- Payment for the provision of employee benefits consisting of group healthcare coverage, including insurance premiums; and
- Payment of state and local taxes assessed on the compensation of employees.
- In calculating payroll costs, borrowers may either use data from the last 12 months or for the 2019 calendar year.
- Lenders have flexibility in evaluating the eligibility of a borrower that operates a seasonal business. Specifically, if a seasonal borrower was not in operation on February 15, 2020, the lender may look to the 8-week time period between February 15, 2019 and June 30, 2019.
- Similarly, seasonal borrowers have flexibility in calculating their payroll costs. They can use the average monthly payroll for the period between February 15, 2019 or March 15, 2019 and June 30, 2019.
- The eight-week period for calculating forgiveness for the loan begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The first disbursement of the loan must be made by the lender no later than ten (10) calendar days from the date of loan approval.
- Borrowers that submitted their applications prior to these FAQs, and in reliance on the April 2, 2020 PPP Interim Final Rule, do not need to update or modify their application; however, a borrower may update its application if it has not yet been processed. Revision of an application may be advantageous to some applicants: in particular, those who excluded non-cash benefits in calculating their payrolls costs.