

### Paycheck Protection Program

*By Matthew P. Prosseda, Managing Director and Megan M. McMahon, Senior Consultant*

Thursday evening (April 2, 2020) the Small Business Administration issued 13 CFR 120, its Interim Final Rule (“IFR”) regarding the PayCheck Protection Program (“PPP”). The 31-page document comes just hours before the new loan program was set to open on April 3. Bankers have been scrambling to get ready to implement this \$349 billion program, designed to provide forgivable loans to small businesses to cover costs including payroll and rent. Here are just a few of the indicators from today’s news about the problems bankers are facing:

[Washington Post - Thousands flood banks as federal small-business loan program begins with bankers expressing worries](#)

[American Banker - Emergency loan program plagued by chaos on eve of launch](#)

[Fox Business News - 7:30am April 3, 2020 - Frank Sorrentino, CEO ConnectOne Bank \(video\)](#)

We at The Kafafian Group have analyzed the IFR and are providing a summary of the provisions of the program. The “SBA PPP Loan Program Interim Final Rule” which follows this newsletter:

- a. outlines eligibility requirements for borrowers,
- b. provides a guide to determine a borrower’s maximum borrowing limit,
- c. details the provisions of the forgiveness amount and how to determine it,
- d. gives instructions on how banks can qualify for the program,
- e. sets out the underwriting requirements, and,
- f. indicates the rates and fees allowed under the program.

We also have a “PPP Borrower Template – Loan and Forgiveness Amount” which can be sent out to potential borrowers to assist them in filling out their application. The template aids the borrower in calculating their payroll costs and maximum loan amount. Additionally, this can streamline the process for your bank to receive a consistent template of calculated costs. Call us and we’ll email the working Excel template to you.

We hope you find these resources helpful as your bank prepares to provide funding for your borrowers. Providing these loans to your customers will help many of them survive through this extraordinary time.

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## **13 CFR Part 120 - Business Loan Program Temporary Changes; Paycheck Protection Program**

### **Interim Final Rule**

**SUMMARY:** This Interim Final Rule (the IFR) announces the implementation of sections 1102 and 1106 of the [Coronavirus Aid, Relief and Economic Security Act](#) (“CARES Act” or the “Act”) Section 1102 of the Act temporarily adds a new product, titled the Paycheck Protection Program, (“PPP”) to the U.S. Small Business Administration’s (SBA’s) 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. 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. This interim final rule outlines the key provisions of SBA’s implementation of sections 1102 and 1106 of the Act in formal guidance and requests public comment.

**Applicability Date:** This interim final rule applies to applications submitted under the PPP through June 30, 2020, or until funds made available for this purpose are exhausted.

With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public’s exposure to the virus.

The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of \$349 billion to provide guaranteed loans under this new 7(a) program.

### **Borrowers:**

#### **Eligibility:**

- a. Small business concerns, as defined in [Section 3 of the Small Business Act \(15 USC 632\)](#),
- b. tax exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC),
- c. veterans’ organizations [501(c)(19)],
- d. Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act.
- e. Sole proprietors, independent contractors or eligible self-employed individuals are eligible.

- f. In operation on February 15, 2020 and had employees for whom were paid salaries and payroll taxes or paid independent contractors, as reported on 1099-MISC.
- g. Ineligible if the business activity is illegal under any law, is a household employer, an owner of 20 percent or more of the applicant, is incarcerated or on probation or subject to indictment or has been convicted of a felony within the last 5 years, is delinquent or has defaulted on any SBA loan.
- h. Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at [https://www.sba.gov/sites/default/files/files/serv\\_sops\\_50105b\\_0\\_5.pdf](https://www.sba.gov/sites/default/files/files/serv_sops_50105b_0_5.pdf))

**Borrowing Limits:**

- a. Lesser of \$10 million or payroll-based formula.
- b. Aggregate payroll costs for the last 12 months including salary, wages, commissions, cash tips or the equivalent, vacation, parental, family, medical or sick leave, group health care coverage, state and local taxes.
- c. For independent contractors or sole proprietors, wage, commissions, income or net earnings from self-employment.
- d. Subtract any compensation paid to an employee in excess of \$100,000 per year.
- e. Divide annual payroll costs by 12 to find monthly average payroll costs.
- f. Multiply by 2.5 (250%)
- g. Add any outstanding Economic Injury Disaster Loan (EIDL), less the amount of any advance under EIDL (because it does not have to be repaid).
- h. There are specific examples in the IFR which are helpful (page 9),
- i. Exclusions – employees outside the US, compensation in excess of \$100,000 for any individual, certain other exclusions (page 11),
- j. Independent contractors can apply on their own: therefore, they do not count for purposes of a borrower's PPP loan calculation.

Interest Rate: 1.00% or 100 basis points.

Maturity: 2 years.

Only one loan per borrower is allowed therefore; borrowers should consider applying for the maximum amount.

The PPP is available on a first-come, first served basis.

Repayment: No payments for the first 6 months following disbursement of the loan. Interest accrues during this period.

Forgiveness: The full amount of principal and accrued interest is eligible for forgiveness. That is, the borrower will not be responsible for any loan payment if the borrower uses all the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained.

- a. Amount will depend upon total amount of payroll costs, payment of interest on mortgage obligations, rent payments, and, utility payments (all of which must have been in place before February 15, 2020), for the eight-week period following the date of the loan.
- b. Not more than 25% of the forgiveness may be attributable to non-payroll costs.

Applicants must submit [SBA Form 2483](#) (PPP Application Form) and payroll documentation. Lenders must submit [SBA Form 2484](#) electronically and maintain forms and supporting documents in its files.

Proceeds can be used for payroll costs (see IFR, 2f page 10), including costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums, mortgage interest, rent, utilities and interest on any other debt obligations incurred before 2/15/2020, and refinancing SBA EIDL loans (page 15).

If PPP funds are misused, SBA will direct the borrower to repay the loan. Knowing misuse could result in fraud charges and recourse against shareholders, members, or partners of the borrower.

Certifications:

- a. Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes.
- b. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- c. Funds were used to retain workers and maintain payroll or for other eligible purposes.
- d. Provide documentation of eligible expenses for the eight-week period following the date of the loan.
- e. Applicant has not received another loan under this program.
- f. Information used to document the loan and forgiveness amounts is true and accurate.
- g. Acknowledge that lender will confirm the eligible amounts using the tax documents submitted.
- h. See Application for exact language of Certifications.

**Lenders:**

Institutions eligible to make PPP Loans:

- a. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis, any federally insured depository institution or any federally insured credit union, any Farm Credit System institution, and others (page 20).
- b. Qualified institutions not currently SBA 7(a) lenders will be automatically qualified under delegated authority by the SBA, unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices. Use the [CARES Act Section 1102 Lender Agreement](#).

Underwriting:

- a. Confirm receipt of borrower certifications in the PPP Application.
- b. Confirm receipt of information demonstrating the borrower had employees and salaries on February 15, 2020.
- c. Confirm dollar amount of Average Monthly Payroll by reviewing payroll documentation submitted with the borrower's application.
- d. Follow applicable BSA requirements, including AML and CIP requirements. PPP loans for existing customers will not require reverification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Application Form." Borrowers must submit such documentation as is

necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

Lenders can rely on borrower's documentation: **The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator of the SBA, Jovita Carranza, will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The Administrator, in consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.**

Fees paid to lenders will be:

- a. Five (5) percent for loans of not more than \$350,000;
- b. Three (3) percent for loans of more than \$350,000, and less than \$2,000,000; and,
- c. One (1) percent for loans of more than \$2,000,000.

Lenders do not have to apply the "credit elsewhere test".

Loan terms:

- a. Loans under PPP will have the same terms, conditions and process as other 7(a) loans, with certain changes.
- b. The guarantee is 100%.
- c. No collateral required.
- d. No personal guarantee required.
- e. Interest rate is 1.00%.
- f. All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility.
- g. No guarantee fee payable by the borrower, no annual service fee to the SBA, no subsidy recoupment fee, and, no fee payable to SBA for any guarantee sold on the secondary market.
- h. Agents may not collect fees from the borrower. Agent fees will be paid by the lender out of the fees it receives from the SBA. Agent fees are limited as follows:
  - a. One (1) percent for loans of not more than \$350,000
  - b. 0.50 percent for loans of more than \$350,000 and less than \$2,000,000
  - c. 0.25 percent for loans of more than \$2,000,000
- i. Loans can be sold in the secondary market after they are fully disbursed. Loans may be sold at a premium or a discount to par value. *There is no guarantee a secondary market will develop.*
- j. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the

borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight-week period after loan disbursement (page 26).

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at [www.sba.gov](http://www.sba.gov).

This Interim Final Rule is necessary to implement Sections 1102 and 1106 of the CARES Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration. The Administrator anticipates that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve.



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