

As of June 13, 2023

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

## **PAYCHECK PROTECTION PROGRAM LOANS** Frequently Asked Questions (FAQs)

The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), including both First Draw PPP Loans and Second Draw PPP Loans. This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA’s interpretation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (as amended), the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), and of the Paycheck Protection Program Interim Final Rules (“PPP Interim Final Rules”)([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,<sup>1</sup> and to the PPP Interim Final Rules and any subsequent rulemaking in effect at the time the lender’s action is taken.

1. **Question:** Paragraph 3.b.iii of the first PPP Interim Final Rule, subsection C.3.c. of the consolidated interim final rule implementing updates to PPP, and subsection (h)(2)(i)(C) of the interim final rule for Second Draw PPP Loans state that lenders must “[c]onfirm the dollar amount of average monthly payroll costs . . . for the preceding calendar year by reviewing the payroll documentation submitted with the borrower’s application.” Does that require the lender to replicate each of the borrower’s calculations?<sup>2</sup>

**Answer:** No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form (SBA Form 2483 or SBA Form 2483-C for First Draw PPP Loans and SBA Form 2483-SD or SBA Form 2483-SD-C for Second Draw PPP Loans). Lenders are expected to perform a good faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rules indicate, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

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<sup>1</sup> This document does not carry the force and effect of law independent of the statutes and regulations on which it is based.

<sup>2</sup> Question 1 published April 3, 2020, revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP, [86 FR 3692](#) (Jan. 14, 2021) and the interim final rule for Second Draw PPP Loans, [86 FR 3712](#) (Jan. 14, 2021), and revised again on March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

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If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers for First Draw PPP Loans?<sup>3</sup>

**Answer:** No. Small business concerns can be eligible borrowers for First Draw PPP Loans even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry. Go to [www.sba.gov/size](http://www.sba.gov/size) for the industry size standards.

Additionally, a business can qualify for a First Draw PPP Loan as a small business concern if it met both tests in SBA's "alternative size standard" as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for a First Draw PPP Loan on the Borrower Application Form, unless otherwise ineligible.

Notwithstanding the foregoing, housing cooperatives, eligible 501(c)(6) organizations, and eligible destination marketing organizations, are eligible for a First Draw PPP Loan only if they employ no more than 300 employees.<sup>4</sup>

3. **Question:** Does my business have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to receive a First Draw PPP Loan?<sup>5</sup>

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<sup>3</sup> Question 2 published April 6, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans. Different eligibility requirements apply to Second Draw PPP Loans. *See* FAQ #63 and subsection (c) of the interim final rule for Second Draw PPP Loans.

<sup>4</sup> *See* subsections B.1.g.v., B.1.g.vii., and B.1.g.viii. of the consolidated interim final rule implementing updates to the PPP for additional information on the eligibility of housing cooperatives, destination marketing organizations, and section 501(c)(6) organizations.

<sup>5</sup> Question 3 published April 6, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans. Different eligibility requirements apply to Second Draw PPP Loans. *See* FAQ #63 and subsection (c) of the interim final rule for Second Draw PPP Loans.

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**Answer:** No. In addition to small business concerns, a business is eligible for a First Draw PPP Loan if the business has 500 or fewer employees or the business meets the SBA employee-based or revenue-based size standard for the industry in which it operates (if applicable). Similarly, First Draw PPP Loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act, and eligible nonprofit news organizations<sup>6</sup> that have 500 or fewer employees or meet the SBA employee-based size standards for the industry in which they operate. First Draw PPP Loans also are available for housing cooperatives, eligible section 501(c)(6) organizations, and eligible destination marketing organizations that employ not more than 300 employees.

4. **Question:** Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers?<sup>7</sup>

**Answer:** No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers' certifications.

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?<sup>8</sup>

**Answer:** Yes. Borrowers must apply the affiliation rules, including any applicable exceptions or affiliation waivers, set forth in SBA's Interim Final Rule on Affiliation, Interim Final Rule on Treatment of Entities with Foreign Affiliates, the consolidated interim final rule implementing updates to the PPP, and the interim final rule for Second Draw PPP Loans. A borrower must certify on the applicable Borrower Application Form that the borrower is eligible to receive a PPP loan. For a First Draw PPP Loan, that certification means that the borrower has no more than 500 employees, is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) that meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. (Notwithstanding the foregoing, housing cooperatives, eligible 501(c)(6) organizations, and eligible destination marketing organizations, are eligible for a First Draw PPP Loan only if they employ no more than 300 employees.) For a Second Draw PPP Loan, that certification means the borrower has no more than 300 employees, after applying the

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<sup>6</sup> See subsection B.1.g.vi. of the consolidated interim final rule implementing updates to the PPP and FAQ #56 for additional information on the eligibility of nonprofit news organizations.

<sup>7</sup> Question 4 published April 6, 2020.

<sup>8</sup> Question 5 published April 6, 2020 and revised March 3, 2021 to conform to subsections B.1.g.v., B.1.g.vii., and B.1.g.viii of the consolidated interim final rule implementing updates to the PPP and subsection (c) of the interim final rule on Second Draw PPP Loans.

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affiliation rules, if applicable, and the borrower meets the other eligibility requirements in subsection (c) of the interim final rule for Second Draw PPP Loans. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?<sup>9</sup>

**Answer:** No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

7. **Question:** Section 7(a)(36)(A)(viii)(II) of the Small Business Act excludes from the definition of payroll costs any employee compensation in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. Does that exclusion apply to all employee benefits of monetary value?<sup>10</sup>

**Answer:** No. The exclusion of compensation in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

8. **Question:** Do PPP loans cover paid sick leave?<sup>11</sup>

**Answer:** Yes. PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003

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<sup>9</sup> Question 6 published April 6, 2020.

<sup>10</sup> Question 7 published April 6, 2020 and revised March 3, 2021 to conform to subsection B.4.h.ii. of the consolidated interim final rule implementing updates to the PPP.

<sup>11</sup> Question 8 published April 6, 2020.

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of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit [here](#).

9. **Question:** My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business’s operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?<sup>12</sup>

**Answer:** In evaluating a borrower’s eligibility, a lender may consider a seasonal borrower to have been in operation on February 15, 2020 if the business was in operation for any 12-week period between February 15, 2019 and February 15, 2020.

10. **Question:** 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 and report payroll taxes?<sup>13</sup>

**Answer:** 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 a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO’s or other payroll provider’s Form 941, 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. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower’s payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?<sup>14</sup>

**Answer:** Yes. However, the borrower should bear in mind that, as the Borrower Application Forms indicate, only an authorized representative of the applicant seeking a loan may sign on behalf of the applicant. An individual’s signature as an “Authorized Representative of Applicant” is a representation to the lender and to the U.S. government 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

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<sup>12</sup> Question 9 published April 6, 2020 and revised March 3, 2021 to conform to subsection B.1.e. of the consolidated interim final rule implementing updates to the PPP.

<sup>13</sup> Question 10 published April 6, 2020.

<sup>14</sup> Question 11 published April 6, 2020 and revised March 3, 2021 to clarify applicability to non-profits.

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Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

**12.Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?<sup>15</sup>

**Answer:** A business is ineligible due to an owner's criminal history only if an owner of 20 percent or more of the equity of the applicant:

- is presently incarcerated or, for any felony, is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or
- has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years.

**13.Question:** Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Forms, in order to complete implementation of their online portals?<sup>16</sup>

**Answer:** Yes. Lenders may use their own online systems and a form they establish that asks for the same information (using the same language) as the Borrower Application Forms. Lenders are still required to send the data to SBA using SBA's interface.

**14.Question:** What time period should borrowers use to determine their number of employees?<sup>17</sup>

**Answer:** Borrowers may use their average employment over the time period used to calculate their loan amount to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12

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<sup>15</sup> Question 12 published April 6, 2020, revised June 25, 2020, and revised again on March 12, 2021 to conform to subsection B.2.a.iii. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698), as amended by subsection III.2 of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

<sup>16</sup> Question 13 published April 6, 2020 and revised March 3, 2021 to include multiple Borrower Application Forms.

<sup>17</sup> Question 14 published April 6, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans and to make other changes. First, Question 14 has been revised to remove discussion of how to calculate a borrower's maximum loan amount because that question has been addressed in greater detail in the documents "How to Calculate Maximum Loan Amounts for First Draw PPP Loans and What Documentation to Provide – by Business Type" ([link](#)) and "Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide" ([link](#)). Second, Question 14 has been revised to clarify how seasonal employers determine their number of employees.

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completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

Seasonal businesses must use the average number of employees per pay period during the 12-calendar week period the borrower used to calculate its payroll costs.

**15. Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower’s payroll costs?<sup>18</sup>

**Answer:** No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business’s payroll costs, except for fishing boat owners as permitted by PPP interim final rules.<sup>19</sup> However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

**16. Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?<sup>20</sup>

**Answer:** Payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee’s and employer’s share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer’s share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.<sup>21</sup>

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<sup>18</sup> Question 15 published April 6, 2020 and revised March 3, 2021 to incorporate the exception for fishing boat owners.

<sup>19</sup> See 85 FR 39066, subsection III.1. (June 30, 2020) and subsection B.4.i. of the consolidated interim final rule implementing updates to the PPP.

<sup>20</sup> Question 16 published April 6, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

<sup>21</sup> The definition of “payroll costs” in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes “taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period,” defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages.

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**17.Question:** I filed or approved a loan application based on the version of the PPP Interim Final Rules published at the time of the application. Do I need to take any action based on the updated guidance in these FAQs?<sup>22</sup>

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

**18.Question:** Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?<sup>23</sup>

**Answer:** If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to BSA compliance.

**19.Question:** Do lenders have to use a promissory note provided by SBA or may they use their own?<sup>24</sup>

**Answer:** Lenders may use their own promissory note or an SBA form of promissory note.

**20.Question:** The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over the applicable forgiveness covered period. When does the applicable forgiveness covered period begin?<sup>25</sup>

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This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will entirely precede the period during which borrowers will be subject to the restrictions on allowable uses of the loans, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

<sup>22</sup> Question 17 published April 6, 2020 and revised March 3, 2021 to reflect subsequent rulemaking.

<sup>23</sup> Question 18 published April 6, 2020. See FAQs #54 and #55 regarding application of these requirements to Second Draw PPP Loans.

<sup>24</sup> Question 19 published April 8, 2020.

<sup>25</sup> Question 20 published April 8, 2020 and revised June 25, 2020. This question was further revised on March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP.



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**Answer:** The CARES Act provided for an eight-week forgiveness covered period that starts on the date the lender makes a disbursement of the PPP loan to the borrower. The lender must disburse the loan no later than 10 calendar days from the date of loan approval.

The Paycheck Protection Program Flexibility Act of 2020, which became law on June 5, 2020, extended the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement, providing substantially greater flexibility for borrowers to qualify for loan forgiveness. The 24-week period applies to all borrowers that received forgiveness prior to December 27, 2020, but borrowers that received an SBA loan number before June 5, 2020, have the option to use an eight-week period.

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted on December 27, 2020, changed the definition of “loan forgiveness covered period” to the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement.

**21. Question:** Do lenders need a separate SBA Authorization document to issue PPP loans?<sup>26</sup>

**Answer:** No. A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (Lender’s Application - Paycheck Protection Program Loan Guaranty) or SBA Form 2484-SD (Lender’s Application - Second Draw Loan Guaranty)<sup>27</sup> to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with the CARES Act, the Economic Aid Act, the PPP Interim Final Rules and guidance, and SBA Form 2484 or SBA Form 2484-SD.

**22. Question:** I am a non-bank lender that meets all applicable criteria of the PPP Interim Final Rules. Will I be automatically enrolled as a PPP lender? What criteria will SBA and the Treasury Department use to assess whether to approve my application to participate as a PPP lender?<sup>28</sup>

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<sup>26</sup> Question 21 published April 13, 2020 and revised March 3, 2021 to conform to the interim final rule for Second Draw PPP Loans.

<sup>27</sup> This requirement is satisfied by a lender when the lender completes the process of submitting a loan through SBA’s electronic loan processing system; no transmission or retention of a physical copy of SBA Form 2484 or SBA 2484-SD is required.

<sup>28</sup> Question 22 published April 13, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP.

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**Answer:** We encourage lenders that are not currently 7(a) lenders to apply in order to increase the scope of PPP lending options and the speed with which PPP loans can be disbursed to help small businesses across America. We recognize that financial technology solutions can promote efficiency and financial inclusion in implementing the PPP. Applicants should submit SBA Form 3507 and the relevant attachments to [NFRApplicationForPPP@sba.gov](mailto:NFRApplicationForPPP@sba.gov). Submission of the SBA Form 3507 does not result in automatic enrollment in the PPP. SBA and the Treasury Department will evaluate each application from a non-bank or non-insured depository institution lender and determine whether the applicant has the necessary qualifications to process, close, disburse, and service PPP loans made with SBA's guarantee. SBA may request additional information from the applicant before making a determination.

**23. Question:** How do the \$10 million cap (or \$2 million cap for a Second Draw PPP Loan) and affiliation rules work for franchises?<sup>29</sup>

**Answer:** If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on First Draw PPP Loans (or \$2 million cap for a Second Draw PPP Loan) is a limit per franchisee entity, and each franchisee is limited to one First Draw and one Second Draw PPP Loan.

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

**24. Question:** How do the \$10 million cap (or \$2 million cap for a Second Draw PPP Loan) and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?<sup>30</sup>

**Answer:** Any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a First Draw PPP Loan. For Second Draw PPP Loans, a business that is assigned a NAICS code beginning with 72 may have no more than 300 employees per physical location and other eligibility criteria must be met.<sup>31</sup>

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<sup>29</sup> Question 23 was published April 13, 2020 and revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

<sup>30</sup> Question 24 was published April 13, 2020 and revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

<sup>31</sup> See subsection (c) of the interim final rule for Second Draw PPP Loans.

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In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees (or 300 employees for a Second Draw PPP loan). As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees (or 300 employees for a Second Draw PPP loan) is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million (or \$2 million for a Second Draw PPP Loan) maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one First Draw or Second Draw PPP Loan. The following examples illustrate how these principles apply.

Example 1. Company X directly owns multiple restaurants and has no affiliates.

- Company X may apply for a First Draw PPP Loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

Example 2. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate First Draw PPP Loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a First Draw PPP Loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a First Draw PPP Loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards, as explained in FAQ #2.

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**25. Question:** Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender's obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?<sup>32</sup>

**Answer:**

For lenders with existing customers: With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information. Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to Bank Secrecy Act (BSA) compliance.

For lenders with new customers: For new customers, the lender's collection of the following information from all natural persons with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information: owner name, title, ownership %, TIN, address, and date of birth. If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity. If you have questions about requirements related to beneficial ownership, go to <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>. Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender's risk-based approach to BSA compliance.

**26. Question:** SBA regulations require approval by SBA's Standards of Conduct Committee (SCC) for SBA Assistance, other than disaster assistance, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest is: a current SBA employee; a Member of Congress; an appointed official or employee of the legislative or judicial branch; a member or employee of an SBA Advisory Council or SCORE volunteer; or a household member of any of the preceding individuals. Do these entities need the approval of the SCC in order to be eligible for a PPP loan?<sup>33</sup>

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<sup>32</sup> Question 25 published April 13, 2020. See FAQs #54 and #55 regarding application of these requirements to Second Draw PPP Loans.

<sup>33</sup> Question 26 published April 14, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedures as amended by Economic Aid Act, [86 FR 8283](#) (Feb. 5, 2021) ("consolidated interim final rule on loan forgiveness and loan review procedures").

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**Answer:** The SCC previously authorized a blanket approval for PPP loans to such entities so that further action by the SCC is not necessary in the PPP program. Under the Economic Aid Act, certain borrowers became ineligible and are prohibited from receiving a First Draw PPP Loan or Second Draw PPP Loan made after December 27, 2020. If a controlling interest in the borrower (meaning 20 percent by vote or value of the outstanding amount of any class of equity interest) is held directly or indirectly by the President of the United States, the Vice President of the United States, the head of an Executive Department, or a Member of Congress, or the spouse of such person as determined under applicable common law, the borrower is ineligible for a First Draw PPP Loan and a Second Draw PPP Loan. In addition, for any First Draw PPP Loan made before December 27, 2020, if the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any such person as determined under applicable common law, directly or indirectly held a controlling interest in the borrower on the date the loan application was submitted to the PPP lender, the borrower is required to disclose such interests to SBA on SBA Form 3508D and submit the form to the PPP lender following submission of the borrower's application for loan forgiveness, as specified in subsection 6.c. of the consolidated interim final rule on loan forgiveness requirements and loan review procedures as amended by the Economic Aid Act.

**27. Question:** SBA regulations require a written statement of no objection by the pertinent Department or military service before it provides any SBA Assistance, other than disaster loans, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest, or if a household member of any of the preceding individuals, is an employee of another Government Department or Agency having a grade of at least GS-13 or its equivalent. Does this requirement apply to PPP loans?<sup>34</sup>

**Answer:** No. The SCC has determined that a written statement of no objection is not required from another Government Department or Agency for PPP loans. However, see FAQ #26 for information for a borrower with a controlling interest (meaning 20 percent by vote or value of the outstanding amount of any class of equity interest) that is held directly or indirectly by the head of an Executive Department or the spouse of such person as determined under applicable common law.

**28. Question:** Is a lender permitted to submit a PPP loan application to SBA through SBA's electronic loan processing system before the lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs, and for

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<sup>34</sup> Question 27 published April 14, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

Second Draw PPP Loans, review the required borrower documentation regarding revenue reduction?<sup>35</sup>

**Answer:** No. Before a lender submits a PPP loan through SBA’s electronic loan processing system, the lender must have collected the information and certifications contained in the Borrower Application Form (SBA Form 2483, SBA Form 2483-C, SBA Form 2483-SD, or SBA Form 2483-SD-C) and the lender must have fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the first PPP Interim Final Rule, subsection C.3. of the consolidated interim final rule implementing updates to the PPP, or subsection (h)(2)(i) of the interim final rule for Second Draw PPP Loans, as applicable. Please refer to the Interim Final Rules and FAQ #1 for more information on the lender’s responsibility regarding confirmation of payroll costs, and the interim final rule for Second Draw PPP Loans for the lender’s responsibility regarding confirmation of revenue reduction.

Lenders who made PPP loans prior to April 14, 2020 and did not understand that these steps are required before submission into E-Tran did not need to withdraw applications submitted to E-Tran before April 14, 2020, but must have fulfilled lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.

**29. Question:** Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?<sup>36</sup>

**Answer:** Yes. All PPP lenders may accept scanned copies of signed loan applications, loan forgiveness applications, and documents containing the information and certifications required by SBA Forms 2483, 2483-C, 2483-SD, 2483-SD-C, 3508, 3508EZ, 3508S, or 3508D, and the promissory note used for the PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

If electronic signatures are not feasible, when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure 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.

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<sup>35</sup> Question 28 published April 14, 2020, revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans, and revised again March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

<sup>36</sup> Question 29 published April 15, 2020, revised March 3, 2021 to reflect the additional SBA forms for Second Draw PPP Loans and loan forgiveness and revised again on March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**30.Question:** Can a lender sell a PPP loan into the secondary market?<sup>37</sup>

**Answer:** Yes. A PPP loan may be sold into the secondary market at any time after the loan is fully disbursed. A secondary market sale of a PPP loan does not require SBA approval. A PPP loan sold into the secondary market is 100% SBA guaranteed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.

**31.Question:** Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?<sup>38</sup>

**Answer:** In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. 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, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” 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 example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.<sup>39</sup>

Lenders may rely on a borrower’s certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repaid the loan in full by May 18, 2020 will be deemed by SBA to have made the required certification in good faith.

**32.Question:** Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?<sup>40</sup>

**Answer:** Yes. Payroll costs includes all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

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<sup>37</sup> Question 30 published April 17, 2020.

<sup>38</sup> Question 31 published April 23, 2020 and revised March 3, 2021 to reflect subsequent PPP guidance and the interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans.

<sup>39</sup> Section 342 of the Economic Aid Act prohibits public companies from receiving a PPP loan after December 27, 2020.

<sup>40</sup> Question 32 published April 24, 2020.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**33.Question:** Is there existing guidance to help PPP applicants and lenders determine whether an individual employee’s principal place of residence is in the United States?<sup>41</sup>

**Answer:** PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121-1(b)(2)) when determining whether an individual employee’s principal place of residence is in the United States.

**34.Question:** Are agricultural producers, farmers, and ranchers eligible for PPP loans?<sup>42</sup>

**Answer:** Yes. Agricultural producers, farmers, and ranchers are eligible for First Draw PPP loans if: (i) the business has 500 or fewer employees, or (ii) the business fits within the applicable revenue-based sized standard under 13 C.F.R. 121.201.

Additionally, agricultural producers, farmers, and ranchers can qualify for First Draw PPP Loans as a small business concern if their business meets SBA’s “alternative size standard.” The “alternative size standard” is currently: (1) maximum net worth of the business is not more than \$15 million, and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

Agricultural producers, farmers and ranchers are eligible for a Second Draw PPP Loan if they have 300 or fewer employees and meet the other eligibility criteria in subsection (c) of the interim final rule for Second Draw PPP Loans.

For all of these criteria, the applicant must include its affiliates in its calculations. See FAQ #5.

**35.Question:** Are agricultural and other forms of cooperatives eligible to receive PPP loans?<sup>43</sup>

**Answer:** As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans. The Economic Aid Act added housing cooperatives (as defined in section 216(b) of the Internal Revenue Code of 1986) that employ not more than 300 employees to the entities eligible for First Draw PPP Loans and Second Draw PPP Loans.

**36.Question:** To determine borrower eligibility under the 500-employee or other applicable threshold for First Draw PPP Loans, or the 300-employee threshold for Second Draw

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<sup>41</sup> Question 33 published April 24, 2020.

<sup>42</sup> Question 34 published April 24, 2020 and revised March 3, 2021 to conform to the interim final rule for Second Draw PPP Loans.

<sup>43</sup> Question 35 published April 24, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule providing updates to the PPP and the interim final rule for Second Draw PPP Loans.



**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

PPP Loans established by the Economic Aid Act, must a borrower count all employees or only full-time equivalent employees?<sup>44</sup>

**Answer:** For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “full-time equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

**37. Question:** Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?<sup>45</sup>

**Answer:** See response to FAQ #31.

**38. Question:** Section 1102 of the CARES Act provides that PPP loans are available only to applicants that were “in operation on February 15, 2020.” Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?<sup>46</sup>

**Answer:** Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership. In addition, where there is a change in ownership effectuated through a purchase of substantially all assets of a business that was in operation on February 15, the business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the acquiring business was not in operation until after February 15, 2020. If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application, except where the pre-sale business had applied for and received a PPP loan. The Administrator, in consultation with the Secretary, has determined that the requirement that a business “was in operation on February 15, 2020” should be applied based on the economic realities of the business’s operations.

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<sup>44</sup> Question 36 published April 26, 2020 and revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

<sup>45</sup> Question 37 published April 28, 2020.

<sup>46</sup> Question 38 published April 29, 2020.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**39. Question:** Will SBA review individual PPP loan files?<sup>47</sup>

**Answer:** For a PPP loan of any size, SBA may undertake a review at any time, before or after SBA remits a forgiveness payment to the lender, in SBA's discretion. For example, SBA may review a loan if the loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.

The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the first PPP Interim Final Rule, subsection C.3. of the consolidated interim final rule implementing updates to the PPP, or subsection (h)(2)(i) of the interim final rule for Second Draw PPP Loans, as applicable, and further explained in FAQ #1.

**40. Question:** Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act (codified as section 7A of the Small Business Act) and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?<sup>48</sup>

**Answer:** No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act (codified as section 7A(d)(6) of the Small Business Act) to prescribe regulations granting de minimis exemptions from the CARES Act's limits on loan forgiveness, SBA and Treasury issued an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation.<sup>49</sup> The interim final rule specifies that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

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<sup>47</sup> Question 39 published April 29, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures, and revised again on July 29, 2021 due to the discontinuance of the use of the Loan Necessity Questionnaire (SBA Form 3509 or 3510) and updates to SBA's loan review processes. All loans, including those of \$2 million and over, will continue to be subject to the PPP program requirements.

<sup>48</sup> Question 40 published May 3, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule providing updates to the PPP, the interim final rule on Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures.

<sup>49</sup> See 85 FR 33004, 33007 (June 1, 2020) and subsection IV.5.a. of the consolidated interim final rule on loan forgiveness and loan review procedures.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**41. Question:** Can a seasonal employer that received a First Draw PPP Loan in 2020 and elected to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form?<sup>50</sup>

**Answer:** Yes. The 2020 First Draw PPP Loan Borrower Application Form required applicants to certify that “The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program.” On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. For First Draw PPP Loans made before December 27, 2020, an applicant that was otherwise in compliance with applicable SBA requirements, and that complied with Treasury’s interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form (April 2, 2020 version) for the time period for calculating average monthly payroll for seasonal businesses, an applicant may have elected to use the time period in Treasury’s interim final rule on seasonal workers.

**42. Question:** Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as “nonprofit organizations” under section 1102 of the CARES Act?<sup>51</sup>

**Answer:** Section 1102 of the CARES Act defines the term “nonprofit organization” as “an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” The Administrator, in consultation with the Secretary of the Treasury, understands that nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code are unique in that many such hospitals may meet the description set forth in section 501(c)(3) of the Internal Revenue Code to qualify for tax exemption under section 501(a), but have not sought to be recognized by the IRS as such because they are otherwise fully tax-exempt under a different provision of the Internal Revenue Code.

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<sup>50</sup> Question 41 published May 3, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans made before December 27, 2020. Seasonal employers that receive a PPP loan in 2021 must calculate payroll costs using average monthly payroll for any 12-week period between February 15, 2019 and February 15, 2020. See “How to Calculate Maximum Loan Amounts for First Draw PPP Loans and What Documentation to Provide – by Business Type” ([link](#)) and “Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide” ([link](#)).

<sup>51</sup> Question 42 published May 3, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

Accordingly, the Administrator will treat a nonprofit hospital exempt from taxation under section 115 of the Internal Revenue Code 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).<sup>52</sup> The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination. This approach helps accomplish the statutory purpose of ensuring that a broad range of borrowers, including entities that are helping to lead the medical response to the ongoing pandemic, can benefit from the loans provided under the PPP.

This guidance is solely for purposes of qualification as a “nonprofit organization” under section 1102 of the CARES Act and related purposes of the CARES Act and does not have any consequences for federal tax law purposes. Nonprofit hospitals should also review all other applicable eligibility criteria, including an important limitation on ownership by state or local governments.<sup>53</sup>

**43. Question:** FAQ #31 reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repaid the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?<sup>54</sup>

**Answer:** SBA extended the repayment date for this safe harbor to May 14, 2020, and subsequently extended it again to May 18, 2020. See FAQ #47. Borrowers did not need to apply for the extensions. The extensions were implemented through revisions to the SBA’s interim final rule providing the safe harbor. See FAQ #46 for additional guidance on how SBA will review the certification.

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<sup>52</sup> This determination need not account for the ancillary conditions set forth in section 501(r) of the Internal Revenue Code and elsewhere associated with securing the tax exemption under that section. Section 501(r) states that a hospital organization shall not be treated as described in section 501(c)(3) unless it meets certain community health and other requirements. However, section 1102 of the CARES Act defines the term “nonprofit organization” solely by reference to section 501(c)(3), and section 501(r) does not amend section 501(c)(3). Therefore, for purposes of the PPP, the requirements of section 501(r) do not apply to the determination of whether an organization is “described in section 501(c)(3).”

<sup>53</sup> See 85 FR 23450, 23451 (April 28, 2020) and the consolidated interim final rule implementing updates to the PPP.

<sup>54</sup> Question 43 published May 5, 2020 and revised March 3, 2021 to reflect subsequent SBA interim final rules at 85 FR 29845 (May 19, 2020) and 85 FR 31357 (May 26, 2020).

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**44. Question:** How do SBA’s affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?<sup>55</sup>

**Answer:** For purposes of the PPP’s 500 or fewer employee size standard (or 300 employee size standard for Second Draw PPP Loans and certain entities for First Draw PPP Loans), an applicant must count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify for a First Draw PPP Loan as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same.

**45. Question:** Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 2020) eligible for the Employee Retention Credit?<sup>56</sup>

**Answer:** This question is no longer applicable because, as a result of a change in the law in December 2020, receipt of a PPP loan no longer makes an employer ineligible for the Employee Retention Credit. See FAQ #65 for updated information related to the Employee Retention Credit.

**46. [RESERVED]**<sup>57</sup>

**47. Question:** An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?<sup>58</sup>

**Answer:** Yes, SBA extended the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers did not need to apply for this extension. This extension was implemented through a revision to the SBA’s interim final rule providing the safe harbor.

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<sup>55</sup> Question 44 published May 5, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans.

<sup>56</sup> Question 45 published May 6, 2020 and revised May 27, 2020 to change the date from “(May 14, 2020)” to “(May 18, 2020).”

<sup>57</sup> Question 46 published May 13, 2020, revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans, and revised again on March 12, 2021 to reflect the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021, and deleted on July 29, 2021 due to the discontinuance of the use of the Loan Necessity Questionnaire (SBA Form 3509 or 3510).

<sup>58</sup> Question 47 published May 13, 2020 and revised March 3, 2021 to reflect subsequent SBA interim final rules.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**48. Question:** By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?<sup>59</sup>

**Answer:** SBA has made available a specific SBA Form 1502 reporting process through which PPP lenders report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved.

**49. Question:** What is the maturity date of a PPP loan?<sup>60</sup>

**Answer:** If a PPP loan received an SBA loan number on or after June 5, 2020, the loan has a five-year maturity. If a PPP loan received an SBA loan number before June 5, 2020, the loan has a two-year maturity, unless the borrower and lender mutually agree to extend the term of the loan to five years. The promissory note for the PPP loan will state the term of the loan.

**50. Question:** What effect does the payment or nonpayment of fees of an agent or other third party have on SBA's guarantee of a PPP loan or SBA's payment of fees to lenders?<sup>61</sup>

**Answer:** The payment or nonpayment of fees of an agent or other third party is not material to SBA's guarantee of a PPP loan or to SBA's payment of fees to lenders. Additional information about such fees can be found in subsection D.4 of the consolidated interim final rule implementing updates to the Paycheck Protection Program.

**51. Question:** Do payments required for the provision of group health care benefits, including insurance premiums, include vision and dental benefits?<sup>62</sup>

**Answer:** Yes. Section 308 of the Economic Aid Act specifies that payroll costs include employer contributions for group life, disability, vision, and dental insurance benefits.

**52. Question:** The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) extended the deferral period for borrower payments of principal, interest, and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period). Previously, the deferral period could

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<sup>59</sup> Question 48 published May 19, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

<sup>60</sup> Question 49 published June 25, 2020.

<sup>61</sup> Question 50 published August 11, 2020 and revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

<sup>62</sup> Question 51 published August 11, 2020 and revised March 3, 2021 to reflect subsection B.11.a.ii of the consolidated interim final rule implementing updates to the PPP.

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end after 6 months. Are lenders and borrowers required to modify promissory notes used for PPP loans to reflect the extended deferral period?<sup>63</sup>

**Answer:** The extension of the deferral period under the Flexibility Act automatically applies to all PPP loans. Lenders are required to give immediate effect to the statutory extension and should notify borrowers of the change to the deferral period. SBA does not require a formal modification to the promissory note. A modification of a promissory note to reflect the required statutory deferral period under the Flexibility Act will have no effect on the SBA's guarantee of a PPP loan.

53.[RESERVED]<sup>64</sup>

54.**Question:** Are FinCEN's April 2020 Frequently Asked Questions regarding the Paycheck Protection Program (PPP) applicable to Second Draw PPP Loans?<sup>65</sup>

**Answer:** Yes. The FinCEN April 2020 PPP [Frequently Asked Questions \(FAQs\)](#) apply to Second Draw PPP Loans. If you have general questions about requirements related to customer due diligence or beneficial ownership, please see <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>.

55.**Question:** For purposes of Bank Secrecy Act/Anti-Money Laundering compliance, can a PPP lender rely on the same information received from a borrower for the purposes of a First Draw PPP Loan for a Second Draw PPP Loan to that same borrower?<sup>66</sup>

**Answer:** The information a lender obtained from a borrower in connection with a First Draw PPP Loan can be relied upon by that lender for a Second Draw PPP Loan application, if the borrower is an existing customer. Decisions regarding the updating of customer due diligence and the verification and updating of the beneficial ownership information collected from customers should be made consistent with the guidance for both existing customers and new customers set forth in the previous April 2020 FAQs and in this FAQ, and pursuant to the lender's risk-based approach to Bank Secrecy Act compliance.

56.**Question:** How does the 500-employee limit for First Draw PPP Loans and the 300-employee limit for Second Draw PPP Loans apply to a public broadcasting station if a college or university operates or holds the license for the station and the station is not a separate legal entity?<sup>67</sup>

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<sup>63</sup> Question 52 published October 7, 2020.

<sup>64</sup> Question 53 published December 9, 2020 and revised March 3, 2021 and deleted on July 29, 2021 due to the discontinuance of the use of the Loan Necessity Questionnaire (SBA Form 3509 or 3510).

<sup>65</sup> Question 54 published January 29, 2021.

<sup>66</sup> Question 55 published January 29, 2021.

<sup>67</sup> Question 56 published January 29, 2021.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**Answer:** Subsection B.1.g.vi of the consolidated interim final rule implementing updates to the PPP, [86 FR 3692](#) (Jan. 14, 2021), and subsection (c)(4) of the interim final rule for Second Draw PPP Loans, [86 FR 3712](#) (Jan. 14, 2021), apply the 500- and 300-employee limits, respectively, based on the number of employees “per location” of the public broadcasting station. This limit on the number of employees per location applies to the public broadcasting station itself and does not include other employees of a college or university that operates or holds the license for the station.

**57.Question:** When determining the eligibility of section 501(c)(6) organizations and destination marketing organizations for First Draw PPP Loans and Second Draw PPP Loans, how is “lobbying activities” defined?<sup>68</sup>

**Answer:** For purposes of determining the eligibility of section 501(c)(6) organizations and destination marketing organizations for First Draw and Second Draw PPP Loans, “lobbying activities” is defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

**58.Question:** May First Draw PPP Loan or Second Draw PPP Loan proceeds be used for lobbying activities or expenditures?

**Answer:** No. None of the proceeds of a First Draw PPP Loan or Second Draw PPP Loan may be used for (1) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602); (2) lobbying expenditures related to a State or local election; or (3) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

**59.Question:** If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, is that borrower eligible for loan forgiveness of its First Draw PPP Loan?

**Answer:** Yes. If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, that borrower is eligible for loan forgiveness, provided it meets all requirements for loan forgiveness set forth in the PPP Interim Final Rules, including but not limited to, loan proceeds are used only for eligible expenses and at least 60% of the loan proceeds is used for eligible payroll costs.

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<sup>68</sup> Questions 57-65 published March 3, 2021.



**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**60. Question:** If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, is that borrower eligible to apply for a Second Draw PPP Loan?<sup>69</sup>

**Answer:** No. Each applicant for a Second Draw PPP Loan must certify on the Second Draw Borrower Application Form (SBA Form 2483-SD or SBA Form 2483-SD-C) that the applicant and any owner of 20% or more of the applicant is not presently involved in a bankruptcy proceeding. Thus, a borrower that received a First Draw PPP Loan and files for bankruptcy protection after disbursement of the First Draw PPP Loan is not eligible to apply for a Second Draw PPP Loan.

**61. Question:** To be eligible for a Second Draw PPP Loan, a borrower must certify on SBA Form 2483-SD or SBA Form 2483-SD-C that, before the Second Draw PPP Loan is disbursed, the borrower will have used the full loan amount (including any increase) of its First Draw PPP Loan “only for eligible expenses.” How does the separate requirement that the borrower must use at least 60% of the First Draw PPP Loan proceeds for payroll costs affect this certification?<sup>70</sup>

**Answer:** The borrower may certify, for purposes of the Second Draw PPP Loan application, that it will have used all of its First Draw PPP Loan proceeds “only for eligible expenses” if the borrower has used or will use the First Draw PPP Loan proceeds for any or all of the eligible expenses outlined in subsection B.11.a.i.-xi of the consolidated interim final rule implementing updates to the PPP. Borrowers should be mindful that failure to use PPP loan proceeds for the required percentage of payroll costs will affect loan forgiveness.

**62. Question:** If a borrower received partial forgiveness of its First Draw PPP Loan, does this make the borrower ineligible for a Second Draw PPP Loan?

**Answer:** If a borrower received partial forgiveness of its First Draw PPP Loan, the borrower is eligible for a Second Draw PPP Loan as long as the borrower used the full amount of its First Draw PPP Loan only for eligible expenses outlined in subsection B.11.a.i.-xi of the consolidated interim final rule implementing updates to the PPP.

**63. Question:** May applicants use SBA’s established size standards (either revenue-based or employee-based) or SBA’s alternative size standard to qualify for a Second Draw PPP Loan?

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<sup>69</sup> Question 60 published March 3, 2021 and revised on March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

<sup>70</sup> Question 61 published March 3, 2021 and revised on March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

**These FAQs do not reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.**

**Answer:** No. Applicants may ***not*** use SBA’s established size standards (either revenue-based or employee-based) or the alternative size standard to qualify for a Second Draw PPP Loan. In general, the size eligibility requirement for Second Draw PPP Loans are narrower than the size eligibility requirement for First Draw PPP Loans. With some exceptions, an applicant is eligible for a Second Draw PPP Loan only if it, together with its affiliates (if applicable), employs no more than 300 employees. The only exceptions are if an Applicant:

- Is assigned a NAICS code beginning with 72 and employs no more than 300 employees per physical location, or
- Is a news organization that is majority owned or controlled by a business concern that is assigned NAICS code 511110 or a NAICS code beginning with 5151 or is a nonprofit public broadcasting entity with a trade or business under NAICS code 511110 or 5151, and, in either case, employs no more than 300 employees per physical location.

**64. Question:** If an owner of an applicant, or a sole proprietor, self-employed individual, or independent contractor has an Individual Taxpayer Identification Number (ITIN) instead of a Social Security Number (SSN), can they use the ITIN on the Borrower Application Form for a PPP loan and the forms to apply for loan forgiveness?<sup>71</sup>

**Answer:** Yes. If an owner of an applicant, or a sole proprietor, self-employed individual, or independent contractor has an ITIN instead of an SSN, they may use the ITIN on the PPP Borrower Application Form (SBA Forms 2483, 2483-C, 2483-SD, and 2483-SD-C, or lender’s equivalent) and the PPP Loan Forgiveness Application Forms (SBA Forms 3508, 3508EZ, and 3508S, or lender’s equivalent). An ITIN is a tax processing number only available to certain nonresident and resident aliens, their spouses, and dependents who cannot get an SSN. It is a 9-digit number, beginning with the number “9”, formatted like an SSN (NNN-NN-NNNN). To be eligible for a PPP loan or to receive loan forgiveness, the applicant must meet all eligibility criteria and PPP requirements, which includes the requirement that the principal place of residence for a sole proprietor, self-employed individual, or independent contractor must be in the United States.

**65. Question:** As of December 27, 2020, is an employer that receives a First Draw PPP Loan or Second Draw PPP Loan also eligible for the Employee Retention Credit?

**Answer:** The Taxpayer Certainty and Disaster Tax Relief Act of 2020, which was enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, on December 27, 2020, permits an employer that received a First Draw PPP Loan or Second Draw PPP Loan to claim the Employee Retention Credit if the

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<sup>71</sup> Question 64 published March 3, 2021 and revised on March 12, 2021 to conform to subsection III.1.h. of the interim final rule on Revisions to Loan Amount Calculation and Eligibility posted March 3, 2021.

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employer is otherwise an eligible employer satisfying the requirements for the credit. However, payroll costs that are qualified wages for the Employee Retention Credit are not eligible for loan forgiveness if the employer elects to claim the credit for those amounts. (Additional guidance from the IRS is available at <https://www.irs.gov/pub/irs-drop/n-21-20.pdf>.)

**66. Question:** On March 3, 2021, SBA posted Interim Final Rule “Revisions to Loan Amount Calculation and Eligibility” allowing Schedule C filers to use gross income to calculate PPP loan amounts. What options do lenders have to assist Schedule C filers who already submitted a PPP loan application to use gross income to calculate their PPP loan amount?<sup>72</sup>

**Answer:** The options available to lenders depend on the status of the PPP loan application.

- If the lender has not submitted a loan guaranty application for the Schedule C applicant who wishes to use gross income to calculate their loan amount, the applicant must submit to the lender SBA Form 2483-C for a First Draw PPP Loan or SBA Form 2483-SD-C for a Second Draw PPP Loan, and the lender then must submit a loan guaranty application to SBA through the Paycheck Protection Platform (Platform) using SBA Form 2484 (Revised 3/21) for a First Draw PPP Loan or SBA Form 2484-SD (Revised 3/21) for a Second Draw PPP Loan.
- If the lender has submitted a loan guaranty application to the Platform and the loan guaranty application has not yet been approved, the lender may withdraw the loan guaranty application from the Platform and resubmit a loan guaranty application after receipt from the applicant of SBA Form 2483-C for a First Draw PPP Loan or SBA Form 2483-SD-C for a Second Draw PPP Loan. The lender must use SBA Form 2484 (Revised 3/21) for a First Draw PPP Loan or SBA Form 2484-SD (Revised 3/21) for a Second Draw PPP Loan when resubmitting the loan guaranty application.
- If SBA has issued a loan number, but the loan has not yet been disbursed, the lender may cancel the loan in E-Tran Servicing and the applicant may apply for a new loan using SBA Form 2483-C for a First Draw PPP Loan or SBA Form 2483-SD-C for a Second Draw PPP Loan.
- If the lender has disbursed the loan but has not filed the related Form 1502 Report reporting disbursement of the loan, the applicant must repay the PPP loan in full, the lender must cancel the loan in E-Tran Servicing, and the applicant may apply for a new loan using SBA Form 2483-C for a First Draw PPP Loan or SBA Form 2483-SD-C for a Second Draw PPP Loan.
- If the lender has disbursed the loan and filed the related Form 1502 Report reporting disbursement of the loan, no changes can be made to the loan amount calculation.

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<sup>72</sup> Question 66 published March 12, 2021.

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Note: Loans must be canceled in E-Tran Servicing (not in the Platform). The Platform may take up to 2 days to reflect the actions in E-Tran Servicing. Lender cannot enter a new loan guaranty application until the Platform recognizes the prior loan's cancellation.

**67. Question:** To be eligible for a PPP loan, each applicant must certify on the PPP borrower application that the applicant and any owner of 20% or more of the applicant are not “presently involved in any bankruptcy.” If an applicant or owner filed for bankruptcy protection in the past, when is an applicant or owner no longer considered to be “presently involved in any bankruptcy” for PPP loan eligibility purposes?<sup>73</sup>

**Answer:** If an applicant or owner has filed a Chapter 7 bankruptcy petition, the applicant or owner is considered to be “presently involved in any bankruptcy” for PPP eligibility purposes until the Bankruptcy Court has entered a discharge order in the case. If an applicant or owner has filed a Chapter 11, 12 or 13 bankruptcy petition, the applicant or owner is considered to be “presently involved in any bankruptcy” for PPP eligibility purposes until the Bankruptcy Court has entered an order confirming the plan in the case. Additionally, if the Bankruptcy Court has entered an order dismissing the case, regardless of the Chapter, the applicant or owner is no longer “presently involved in any bankruptcy.” The discharge order, the order confirming the plan or the order of dismissal, whichever is applicable, must be entered before the date of the PPP loan application. Notwithstanding the foregoing, if an applicant has permanently closed as a result of a bankruptcy filing, the applicant is ineligible for a PPP loan because the applicant is required to certify on the PPP borrower application that the applicant “has not permanently closed.”

**68. Question:** Does a nonprofit organization qualify as a “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) if:

- The nonprofit organization *has* received approval of an application for tax exemption from the Puerto Rico *Departamento de Hacienda*; **but**
- *has not* applied for and received recognition from the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code?<sup>74</sup>

**Answer:** The Administrator will treat a nonprofit organization that meets the description set forth in section 501(c)(3) of the Internal Revenue Code and that has obtained approval of its application for tax exemption from the Puerto Rico *Departamento de Hacienda* as meeting the definition of “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) under the conditions described below.

Section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) defines the term “nonprofit organization” as “an organization that is described in section

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<sup>73</sup> Question 67 published April 6, 2021.

<sup>74</sup> Question 68 published June 8, 2021.

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501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” To be described in section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3). The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.

The Administrator understands that some nonprofit organizations in Puerto Rico that have applied for and received tax exempt status locally from the Puerto Rico *Departamento de Hacienda* may meet the description set forth in section 501(c)(3) of the Internal Revenue Code but may not have sought to be recognized by the Internal Revenue Service as exempt from taxation under section 501(a) of the Internal Revenue Code on such basis. Because these organizations may not otherwise be subject to U.S. federal income tax, for example, due to Puerto Rico being treated as a foreign jurisdiction for most U.S. federal income tax purposes, these organizations may not have sought exemption under section 501(a).

In order to accomplish Congress’s intent of ensuring a broad range of borrowers may qualify for PPP loans, the Administrator will treat a nonprofit organization that has obtained approval of its application for tax exemption from the Puerto Rico *Departamento de Hacienda* as meeting the definition of “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) if the nonprofit organization reasonably determines, in a written record maintained by the nonprofit organization, that it would be an organization described in section 501(c)(3) of the Internal Revenue Code (without regard to the notification requirement in section 508(a) of the Internal Revenue Code) and is therefore within a category of organizations that are eligible to be exempt from taxation under section 501(a), regardless of whether the nonprofit organization has applied for recognition from the Internal Revenue Service.

For more information, please visit [www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations](https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations).

This guidance is solely for purposes of qualification as a “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) and related purposes of the CARES Act, and does not have any consequences for any federal tax purposes. Puerto Rico nonprofit organizations must also meet all other applicable eligibility criteria to receive a PPP loan and loan forgiveness.

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69. **Question:** Why is SBA discontinuing use of the Loan Necessity Questionnaire (SBA Form 3509 or 3510)?<sup>75</sup>

**Answer:** In October 2020, SBA issued two Loan Necessity Questionnaires (SBA Forms 3509 and 3510) to facilitate the collection of supplemental information that would be used by SBA loan reviewers to evaluate the good faith certification made by PPP borrowers on their loan application that economic uncertainty made the loan request necessary to support ongoing operations. Each borrower, that together with its affiliates, received PPP loans with an original principal amount of \$2 million or greater was required to complete the form.

On October 26, 2020, SBA published a 30-day notice soliciting comments on the information collection that included the Loan Necessity Questionnaires (85 FR 67809). Additionally, on January 4, 2021, SBA published a 60-day notice soliciting comments on the information collection that included the Loan Necessity Questionnaires (86 FR 172). SBA received 61 comments from members of the public regarding the Loan Necessity Questionnaires, and the majority of the comments raised objections to the questionnaires.

Based on the results of loan reviews that it has completed thus far SBA believes audit resources will be more efficiently deployed across all loans if the loan necessity questionnaire is discontinued. The loan necessity reviews, including the review of the borrower's completed Loan Necessity Questionnaire, are lengthy and have caused delays beyond the 90-day statutory timeline for forgiveness, thus negatively impacting those borrowers that made their loan necessity certification in good faith. For these reasons, SBA is discontinuing any reliance on the Loan Necessity Questionnaires.

70. **Question:** Are 501(c)(3) Nonprofit Lenders Eligible for PPP Loan Forgiveness?<sup>76</sup>

**Answer:** Yes, provided that the 501(c)(3) nonprofit lender has complied with all applicable PPP rules, other than 13 CFR 120.110(b) as incorporated into the PPP rules.

Because the CARES Act provided that “[e]xcept as otherwise provided,” the SBA Administrator may guarantee PPP loans “under the same terms, conditions and processes” as other 7(a) loans, SBA initially interpreted the CARES Act to mean that 13 CFR 120.110 was incorporated into the PPP requirements, except to the extent of any conflict with the statute. 13 CFR 120.110 provides in pertinent part that “non-profit businesses” and “financial businesses primarily engaged in the business of lending” are ineligible for SBA business loans. Although the CARES Act specifically authorized nonprofit organizations defined at 15 U.S.C. § 636(a)(36)(A)(vii) to be eligible for PPP

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<sup>75</sup> Question 69 published July 29, 2021.

<sup>76</sup> Question 70 published May 5, 2022.

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loans, it was silent as to financial businesses/lenders. SBA took this as allowing nonprofits to overcome the 13 CFR 120.110 restriction, but not lenders.

A review of SBA's PPP loan records shows that 501(c)(3) nonprofit lenders were confused as to their eligibility for a PPP loan.

SBA has determined that 501(c)(3) nonprofit lender borrowers reasonably relied on the CARES Act's nonprofit authority regarding their eligibility for a PPP loan. In addition, enforcing the Forgiveness and Loan Review IFR (86 FR 8283) that provides for denial of forgiveness to 501(c)(3) nonprofit lenders due to application of the PPP eligibility rule incorporating 13 CFR 120.110(b) will negatively affect the remaining small number of 501(c)(3) nonprofit lenders that have not yet received forgiveness.

Because of reasonable and demonstrated confusion on the part of 501(c)(3) nonprofit lender borrowers, significant borrower hardship, and interference with those borrowers' mission of providing capital to underserved small businesses, the Administrator is exercising her broad discretion under Section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)) to decline to enforce the Forgiveness and Loan Review IFR rule providing for denial of forgiveness to ineligible borrowers for 501(c)(3) nonprofit lenders. As a result, 501(c)(3) nonprofit lenders are eligible for forgiveness of their PPP loans, provided that the 501(c)(3) nonprofit lender has complied with all applicable PPP rules, other than 13 CFR 120.110(b) as incorporated into the PPP rules.

**71. Question:** Are 501(c)(3) nonprofit organizations with more than 500 employees eligible for PPP Loan Forgiveness?<sup>77</sup>

**Answer:** Section 7(a)(36)(A)(vii) of the Small Business Act (15 U.S.C. 636(a)(36)(A)(vii)) (as added by section 1102(a)(2) of the CARES Act) defines the term "nonprofit organization" as "an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code" (501(c)(3) nonprofit organizations). In general, the CARES Act provided that 501(c)(3) nonprofit organizations with a total of 500 or fewer employees were eligible to receive a First Draw PPP Loan. The American Rescue Plan Act (ARPA), enacted on March 11, 2021, increased the size eligibility standard for 501(c)(3) nonprofit organizations for First Draw PPP Loans from a total of 500 or fewer employees to no more than 500 employees *per physical location* of the 501(c)(3) nonprofit organization. On March 22, 2021, SBA published an Interim Final Rule implementing the provisions of ARPA applicable to PPP (86 FR 15083) (ARPA IFR).

On May 31, 2022, the SBA Office of Hearings and Appeals (OHA) issued an Initial Decision in the *Appeal of Lawndale Christian Health Center*, Docket No. PPP-5819168004. In that Initial Decision, the Administrative Law Judge determined that because the applicability date set forth by SBA in the ARPA IFR stated that the ARPA changes to PPP apply to "loans approved, and loan forgiveness applications submitted, on or after March 11, 2021," 501(c)(3) nonprofit

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<sup>77</sup> Question 71 published July 8, 2022.

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organizations that received a First Draw PPP Loan before March 11, 2021, but applied for forgiveness on or after March 11, 2021, are entitled to forgiveness of their First Draw PPP Loan if they meet the ARPA increased size eligibility standard.

The Final Rule on Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program published by SBA on September 16, 2021 (86 FR 51589) provides that initial decisions rendered by OHA are not precedential. The Administrator has reviewed the OHA decision issued in the *Appeal of Lawndale Christian Health Center*. Based on the OHA decision and the exercise of her broad discretion under Section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), the Administrator has determined that any 501(c)(3) nonprofit organization that received a loan before March 11, 2021, but submits a forgiveness application on or after March 11, 2021, will not be ineligible for forgiveness on the basis that they have more than 500 employees in multiple physical locations. As a result, a 501(c)(3) nonprofit organization that submits a forgiveness application on or after March 11, 2021, is eligible for forgiveness if the 501(c)(3) nonprofit organization meets the ARPA increased size eligibility standard and has otherwise complied with all applicable PPP rules.

**72. Question:** Are the amounts paid by a borrower to a third-party payer for the third-party payer's employees to operate the borrower considered eligible payroll expenses for the purpose of calculating the maximum loan amount?<sup>78</sup>

**Answer:** On April 6, 2020, SBA published FAQ 10 which asked, "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 and report payroll taxes?" SBA's answer to that FAQ addressed "PEOs or similar payroll providers" and stated, in part, that "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."

FAQ 10 was issued three days after the PPP program began accepting applications and was intended to provide guidance to PPP borrowers when calculating their maximum loan amount if the borrower contracted with a PEO or similar payroll provider to process payroll and report payroll taxes. FAQ 10 was intended to allow borrowers that contracted with a third-party payer when paying employees to use the payroll amounts paid to the third-party payer as a basis for obtaining a PPP loan, resulting in the ability of the borrower to use the PPP loan to continue to pay payroll for those employees. Because there have been conflicting interpretations of FAQ 10, the Administrator has determined that a clarification of FAQ 10 is appropriate.

On September 13, 2022, the SBA Office of Hearings and Appeals (OHA) issued a decision in the *Appeal of Windsor Court Hotel Partners, LLC*, Docket No. PPP-5292997209, which addressed FAQ 10. In that matter, the borrower (a hotel) and a management company contracted for borrower to use workers who were employed by the management company to operate the

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<sup>78</sup> Question 72 published June 13, 2023.



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borrower. Borrower was responsible for the payroll costs associated with the management company employees. In the decision, the Administrative Law Judge, relying on FAQ 10, held that the management company is a “similar payroll provider” and that payroll costs of the similar payroll provider’s employees are includable as eligible payroll costs of the borrower for the purpose of calculating the maximum loan amount. The decision found that the borrower ultimately incurred the payroll expense, and the management company did not apply for or receive a PPP loan.

The Administrator has reviewed the OHA decision issued in the *Appeal of Windsor Court Hotel Partners*. Based on that decision and the exercise of the Administrator’s broad discretion under Section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), the Administrator is clarifying FAQ 10. Accordingly, payroll costs paid by a borrower to a third-party payer for the third-party’s employees to operate the borrower are eligible payroll costs for the purpose of calculating the borrower’s maximum loan amount, as long as the employees were not otherwise counted towards payroll costs on a PPP loan received by the third-party payer. This clarification is consistent with the purpose of the PPP to cover payroll expenses and keep workers employed during the COVID pandemic. For example, some businesses, such as hotels, routinely structure their business operations to remit payroll costs to a management company that operates the business and provides workers. Other businesses lease employees or use staffing agencies to operate their business paying those entities’ employees to operate the business. In these situations, the borrower is ultimately responsible for the payroll expense. As a result, payroll cost documentation which shows that a borrower paid a third-party payer for the employees of the third-party to operate the borrower will be permitted to support eligible payroll costs for the purpose of calculating the maximum loan amount as long as the employees were not otherwise counted towards payroll costs on another PPP loan, and all other PPP requirements are met, including the submission of payroll documentation that indicates the amount of wages and payroll taxes reported to the IRS by the third-party payer.