



The Interim Final Rule and its Effect on the Implementation of the Paycheck Protection Program

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On April 2, 2020, the Small Business Administration released an Interim Final Rule. The Interim Final Rule provides greater clarity about the implementation and overall requirements of the Paycheck Protection Program (“PPP”) under the CARES Act, which seeks to aid small businesses affected by the COVID-19 Pandemic. Below are the highlights of the Interim Final Rule, particularly as they alter prior guidance or expectations under the CARES Act:

- **Interest Rate** – Interest Rate will be 1% (rather than 0.5%).
- **Use of the Proceeds** – At least 75% of the PPP loan proceeds **MUST** be used for payroll costs (including any EIDL loan that is refinanced). This is a new requirement and is important for businesses who need the money to pay interest on mortgage, rent, and utilities.
- **Maturity Date** – PPP loans will mature in 2 years (rather than a maximum maturity of 10 years as provided by the CARES Act).
- **Deferment** – Deferment is limited to 6 months (rather than 1 year as authorized by the CARES Act).
- **First Come, First Serve** – PPP loans will be awarded on a first-come, first-serve basis.
- **One Loan** – No eligible borrower may receive more than one PPP loan.
- **Size Requirement** – The number of employees used to calculate whether the company falls under the size requirement is limited to employees who have their principal place of residence in the United States.
- **Affiliation Rules** – The SBA’s affiliation rules apply, unless specifically waived by the CARES Act. Additionally, the SBA intends to promptly issue guidance about the applicability of the affiliation rules to PPP loans. It is unclear what this means

for companies that may have been previously excluded because of the broad nature of the affiliation rules.

- **Maximum Loan Amount Calculation** – The maximum amount a borrower may borrow is determined by calculating, among other things, the aggregate payroll costs from the last twelve months (rather than for the 2019 calendar year).
- **Payroll Costs** – A calculation of the monthly payroll costs is included with examples. Note, the definition of “payroll costs” excludes any compensation of an employee whose principal place of residence is outside the United States and federal payroll taxes for amounts imposed or withheld between February 15, 2020, and June 30, 2020.
- **Independent Contractors** – Independent contractors do not count for purposes of a borrower’s PPP loan calculations because they can apply for a PPP loan on their own.
- **Loan Forgiveness** – Not more than 25% of the forgiven amount may be for non-payroll costs. The SBA will issue additional guidance on loan forgiveness.
- **Misuse of Funds** – Knowingly misusing funds for unauthorized purposes will trigger a repayment obligation and may expose companies, shareholders, members, or partners to additional liability such as charges for fraud.
- **Certifications** – In addition to certifying that the applicant is adversely affected by the current economic uncertainty, and that funds will be used to help retain workers and make payments of covered operating expenses, an authorized representative of the applicant must also certify the following:
 - The applicant was in business on February 15, 2020, and had employees for whom it paid salaries and payroll taxes or paid independent contractors.
 - Documentation verifying the number of employees and dollar amounts of payroll costs and covered operating expenses for the 8-week period following the loan will be provided to the lender.
 - Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest

payments, covered rent payments and covered utilities.

- From February 15, 2020, through December 31, 2020, the applicant has not and will not seek another loan under the PPP.
 - The information provided is true and accurate in all material respects and acknowledgment that knowingly making a false statement may result in fines and/or imprisonment.
 - The tax documentation submitted is identical to those submitted to the IRS.
- **E-signatures or E-consents** – To facilitate the application process, e-signatures or e-consents may be used.
 - **Lender Underwriting** – Lenders must do the following:
 - Confirm receipt of borrower certifications contained in the Paycheck Protection Program Application form issued by the SBA.
 - Confirm receipt of information demonstrating that a borrower had employees for whom they paid salaries and payroll taxes on or around February 15, 2020.
 - Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application.
 - Follow applicable BSA requirements (as further detailed in the Interim Final Rule).
 - **Lender Due Diligence** – All loans will be processed by all lenders under delegated authority, and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds. Further, a lender does not have to verify the accuracy of the information provided by the borrower to receive loan forgiveness.
 - **Secondary Market Transactions** – A lender may request that the SBA purchase the expected forgiveness amount of the PPP loan or a pool of PPP loans at the end of the seventh (7th)

week of the covered period.

In addition, the SBA released new applications for the PPP. The borrower application adds a number of questions, including whether all employees included in the payroll calculations have the US as their principal place of residence, and whether the applicant is a franchise listed in the SBA franchise directory. In addition, it modifies questions on the previously released application to limit the amount of information provided by the applicant. For example, rather than asking the applicant to list all affiliates, the affiliation question now asks whether the applicant or any owner is the owner of another business or has common management with any other business.

Note: any applicant who has submitted the previously released application will need to complete the new application.

The newly released lender application is shorter than the one released earlier this week. Notably, the lender application no longer places the burden on the lender to confirm the borrower's eligibility, including the calculation of the size of any affiliates under the affiliation rules.

Our team of attorneys is here to help you analyze the availability and features of these lending programs. Lenders are expecting to see a high volume of applications with the funding of covered loans starting as early as April 3, 2020.

For more information on the Paycheck Protection Program, Emergency Economic Injury Disaster Loans, and other financial assistance available to businesses under the CARES Act, please contact [Becky Moore](#), [Maria Kroeger](#), or any attorney in Frost Brown Todd's [Finance](#) Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a special team focusing on SBA funding options under the CARES Act. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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