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FAQ: CARES Act SBA Loan Programs

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Congress's coronavirus financial relief package, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was the largest economic relief bill in United States history and supported individuals and businesses affected by the pandemic. On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021, into law, reopening several programs originally created in the CARES Act and establishing several new programs for individuals and businesses. This piece addresses the Paycheck Protection Program (PPP), Second Draw Loans, the Economic Injury Disaster Loans (EIDL), and Emergency Economic Injury Grants (EIDL Grants), and has been updated in light of the Consolidated Appropriations Act. An updated PPP application form has been issued by the SBA, together with an application for the new Second Draw Loan program. Furthermore, the SBA has issued guidance on first draw PPP loans and on the Second Draw Loans. These applications and the guidance can be found on the Treasury's website (www.treasury.gov). Additional guidance is expected soon, and this post will be updated accordingly once such information is released. A separate Frequently Asked Questions article discusses PPP loan forgiveness in greater detail.

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Eligibility and Affiliations

Q: If an eligible business did not receive a PPP loan in the first round, can it apply for a PPP loan now?

A: Yes. The Consolidated Appropriations Act, 2021, reopened the original PPP loan program (which previously expired on August 8, 2020) until March 31, 2021. Eligible businesses, non-profits, sole proprietors, independent contractors and self-employed individuals that did not previously receive a PPP loan may apply for a PPP loan until March 31, 2021.

Q: Who is eligible to receive PPP loans?

A:

Generally, any business, 501(c)(3) nonprofit organization, 501(c)(19) veterans organization, Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act, public broadcasting entities with not more than 500 employees; housing cooperatives, certain 501(c)(6) nonprofit organizations, and certain destination marketing organizations with not more than 300 employees;

Any business that meets the SBA *employee-based* size standards[1] for the industry in which it operates (if applicable);

Any business that is a "small business concern" as defined in section 3 of the Small Business Act, 15 U.S.C. 632, and meets the SBA *employee-based* **or** *revenue-based* size standards[2] corresponding to its primary industry; or

Any business that is a "small business concern" under the SBA's "alternative size standard" as of March 27, 2020, which standard is met if the business has not more than (1) a maximum tangible net worth of $15 million and (2) an average net income of $5 million (after Federal income taxes, excluding any carry-over losses) for 2 full fiscal years before the date of application.

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Sole proprietors, independent contractors, and "eligible self-employed individuals" (as defined in the Families First Coronavirus Response Act) are also eligible, so long as they submit documentation evidencing eligibility (including payroll tax filings reported to the IRS, Forms 1099-MISC, and income and expenses).

An important exception has been made for a business that, at the time of loan disbursal, is assigned an NAICS code beginning with 72 (accommodation and food services), or is majority owned or controlled by a business with – or has a trade or business that falls under – an NAICS code beginning with 511110 (newspaper publishers) or 5151 (radio and television broadcasting), or is an eligible nonprofit organization that is assigned an NAICS code beginning with 5151 (radio and television broadcasting). Such a business can have more than 500 employees, so long as that business employs not more than 500 employees per physical location.

In order to qualify for the PPP, a business must count all domestic and foreign employees of all of its affiliates in determining the 500- (or 300 for housing cooperatives, 501(c)(6) organizations and destination marketing organizations) person limit unless:

Business, at the time of loan disbursal, is assigned an NAICS code beginning with 72 (accommodation and food services); or

Business is operating as a franchise that is assigned a franchise identifier code by the SBA; or

Business receives financial assistance from a small business investment company (SBIC); or

Business is majority owned or controlled by a business with – or has a trade or business that falls under – an NAICS code beginning with 511110 (newspaper publishers) or 5151 (radio and television broadcasting); or

Eligible nonprofit organization is assigned an NAICS code beginning with 5151 (radio and television broadcasting).

Additionally, in evaluating eligibility, a lender is required to consider whether the business was in operation on February 15, 2020 and had employees for whom the business paid salaries and payroll taxes.

If a business meets the eligibility requirements set forth above, it will NOT be eligible for a PPP loan if it is a business identified in 13 C.F.R. 120.110 and described further in the SBA's SOP 50 10 5, Subpart B, Chapter 2 (with the exception that specific nonprofit organizations authorized under the CARES Act are eligible, and a business that is otherwise eligible is not rendered ineligible due to its receipt of legal gaming revenues). Further, an SBA Interim Final Rule provides that hedge funds and private

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equity firms are ineligible, debtors in bankruptcy proceedings are not eligible, and portfolio companies of private equity funds are potentially ineligible. The Interim Final Rule can be found here.

The Consolidated Appropriations Act, 2021, also clarifies that any business concern or entity primarily engaged in political or lobbying activities, professional sports leagues, organizations with the purposes of promoting or participating in a political campaign or other activity, and publicly traded companies (with the exception of certain publicly traded news organizations) are not eligible for a PPP loan. Further, entities that receive a Shuttered Venue Operators Grant are not eligible to receive a PPP loan. Additionally, any business concern or entity that has certain connections with or operations in the People's Republic of China or the Special Administrative Region of Hong Kong are ineligible, as are business concerns and entities that have a resident of the People's Republic of China as a board member, and any person that is required to register under the Foreign Agents Registration Act of 1938.

Q: Who is eligible for a PPP Second Draw Loan?

A: The Consolidated Appropriations Act, 2021, created the PPP Second Draw Loan Program for, generally, any business, 501(c)(3) nonprofit organization, 501(c)(19) veterans organization, Tribal business, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that:

employs not more than 300 employees (per location for businesses with an NAICS code beginning with 72 and eligible news organizations with more than one physical location);

has expended the full amount of its first PPP loan; and

can demonstrate at least a 25% reduction in gross receipts in the 1st, 2nd, 3rd, or 4th quarter of 2020 as compared to the same quarter in 2019.

The SBA has provided guidance (available here) on calculating Second Draw Loan amounts and the 25% reduction in gross receipts. Also, the PPP's prior waiver of affiliation rules for certain businesses in the food services and accommodation industries, certain franchises, and entities receiving funds from licensed SBIC lenders also applies to these PPP Second Draw Loans. Businesses not in operation on February 15, 2020 are not eligible. Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ mot more than 300 employees *per physical location*.

An applicant is not eligible for a Second Draw Loan, even if it meets the eligibility requirements, above, if the applicant is: (1) not eligible for a first draw PPP loan; (2) a business concern or entity primarily engaged in political activities or lobbying activities; (3) business concerns or entities with

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certain connections with or operations in the People's Republic of China or the Special Administrative Region of Hong Kong, as are business concerns and entities that have a resident of China as a board member; (4) any person that is required to register under the Foreign Agents Registration Act of 1938; (5) any person or entity that receives a grant for shuttered venue operators; (6) any entity in which the President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the entity; (7) any issuer of securities listed on an exchange registered as a national securities exchange; (8) any entity that has previously received a Second Draw PPP Loan; or (9) an entity that has permanently closed.

If a borrower's first draw PPP loan is under review by SBA and/or information in SBA's possession indicates that the borrower may have been ineligible for the first draw PPP loan it received or for the loan amount it received, the borrower's application for a Second Draw Loan will not receive an SBA loan number until the issue is resolved.

Q: As of what date do businesses calculate their headcount?

A: Borrowers may choose to calculate their headcount using the average number of employees (1) during the previous 12 months prior to the date of the PPP loan application, (2) per month during calendar year 2019 or (3) per pay period in the 12 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 in operation, if it has not been in operation for 12 months).

Q: How does a business determine its "affiliates"?

A: "Affiliate" status is determined under current SBA regulations, which provide generally for a broad definition based on control. Concerns and entities are affiliates of each other when one controls or has power to control the other, or a third party or parties controls or has power to control both. It does not matter whether control is exercised, so long as the power to control exists. Control/affiliation is a facts and circumstances test that includes both affirmative and negative control. Parties with significant equity, negative covenants, board seats, blocking rights, and other shareholder/contractual rights are generally considered affiliates, even when they don't have a majority voting control or control of the board. Additional guidance from the SBA and Treasury on affiliate status was issued on April 3, 2020. Such guidance can be found here and here.

Q: If a business has adequate sources of liquidity to support its ongoing operations, is it still eligible for a PPP loan?

A: Maybe. Although the SBA has waived its "credit-elsewhere" test, the SBA and Treasury issued guidance on April 23, 2020, April 28, 2020 and May 5, 2020 that borrowers (public and private) must

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still certify in good faith that their PPP loan request was necessary, "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."

The SBA did, however, create two safe harbors for certain borrowers: (1) any business that applied for a PPP loan prior to April 24, 2020 and repaid the loan in full by May 18, 2020 is deemed by the SBA to have made the required certification in good faith and (2) any business that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

In December 2020, the SBA issued Loan Necessity Questionnaires (Form 3509 for For-Profit Borrowers and Form 3510 for Non-Profit Borrowers), the purpose of which is to facilitate the collection of supplemental information that will be used by SBA loan reviewers to evaluate the good-faith certification made on the PPP loan application that economic uncertainty made the loan request necessary. Each for-profit and non-profit borrower that, together with its affiliates, received PPP loans with an original principal amount of $2 million or greater is required to complete this form and submit it, along with the required supporting documents, to its PPP lender. The completed form is due to the PPP lender within 10 business days of borrower's receipt from its PPP lender. The SBA has indicated in FAQ #53 (published on December 9, 2020) that a request to complete this form does not mean that SBA is challenging a borrower's certification. Instead, the SBA's assessment of a borrower's certification will be based on the totality of the borrower's circumstances. After a borrower submits its completed questionnaire, the SBA may request additional information, if necessary to complete its review. When additional information is requested, borrowers will have an opportunity to provide a narrative response to the SBA explaining the circumstances that provided the basis for their good faith loan necessity certification.

Further, within 45 days of enactment of the Consolidated Appropriations Act, 2021 (12/27/20), the SBA is required to submit an audit plan that details the policies and procedures for conducting forgiveness reviews and audits, as well as the metrics that the SBA will use to determine which loans will be audited.

Q: How does a PPP loan coordinate with the SBA's existing loans?

A: Businesses can apply for PPP loans *and* other SBA financial assistance, including Economic Injury Disaster Loans (EIDLs), traditional 7(a) loans, 504 loans, and microloans, and can also receive investment capital from a small business investment company (SBIC). However, the business *cannot* use the PPP loan *for the same purpose* as its other SBA loan(s). For example, if a business uses its PPP loan to cover payroll for the 24-week (or the 8-week, if elected by businesses that received an SBA loan number before June 5, 2020) covered period, it *cannot* use a different SBA loan product for

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payroll for those same costs in that applicable period, although it could use it for payroll not during that applicable period or for different workers.

Per the SBA's Procedure Notice issued on June 19, 2020:

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was *not* used for payroll costs, then its EIDL loan is *not* required to be refinanced with its PPP loan;

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was used for payroll costs, then its PPP loan *must* be used to refinance the full amount of its EIDL loan; and

if a business received an SBA EIDL loan *before* January 31, 2020 or *after* April 3, 2020, then its EIDL loan may *not* be refinanced with its PPP loan.

The amount of the EIDL loan to be refinanced does *not* include the amount of any EIDL "advance" (also referred to as an EIDL "grant") received by the business, because the EIDL advance does not need to be repaid.

Q: How does the PPP loan work with the temporary Emergency Economic Injury Grants awarded under the EIDL Program?

A: EIDL Grant and EIDL loan recipients may apply for and take out a PPP loan as long as there is no duplication in the uses of funds. Per the Consolidated Appropriations Act, 2021, the proceeds from an EIDL Grant will not be deducted from the loan forgiveness amount on the PPP loan. For those PPP borrowers that already received PPP loan forgiveness – and had their amount of forgiveness reduced by the amount of their EIDL grant (up to $10,000) – the SBA issued an Interim Final Rule on January 8, 2021 stating that it will identify forgiveness payments that were reduced by EIDL Advances and automatically remit a reconciliation payment to the ACH account identified by the PPP lender.

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PPP Loan Amounts and Use of Proceeds

Q: What is the maximum amount of a first round PPP loan?

A: Businesses are eligible for the lesser of:

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$10,000,000, and

2.5 times the average monthly payroll costs (see below for definition) determined during either calendar year 2019 or 2020.

The SBA has provided guidance on how applicants should calculate their first round PPP loan amount, available here. Please note that seasonal employers use the average total monthly payments for payroll from any 12-week period selected by the seasonal employer between February 15, 2019 and February 15, 2020.

The Consolidated Appropriations Act, 2021, establishes a specific loan calculation for the first round of PPP loans for farmers and ranchers who operate as a sole proprietor, independent contractor or self-employed individual who reports income and expenses on a Schedule F and were in business as of February 15, 2020. These entities may use their gross income in 2019 as reported on a Schedule F. PPP lenders may recalculate loans that have been previously approved to these entities if they would result in a larger loan.

Per the SBA's Procedure Notice issued on June 19, 2020:

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was *not* used for payroll costs, then its EIDL loan is *not* required to be refinanced with its PPP loan;

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was used for payroll costs, then its PPP loan *must* be used to refinance the full amount of its EIDL loan; and

if a business received an SBA EIDL loan *before* January 31, 2020 or *after* April 3, 2020, then its EIDL loan may *not* be refinanced with its PPP loan.

The amount of the EIDL loan to be refinanced does *not* include the amount of any EIDL "advance" (also referred to as an EIDL "grant") received by the business, because the EIDL advance does not need to be repaid.

Q: What is the maximum amount of a PPP Second Draw Loan?

A: Generally, a business is eligible for the lesser of:

$2,000,000; and

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2.5 times (3.5 times for entities that are assigned an NAICS code beginning with 72 at the time of loan disbursal) the average monthly payroll costs (see below for definition**)** determined – at the election of the borrower – during either: (i) the one-year period before the date on which the loan is made; (ii) the calendar year 2019 or (iii) for those borrowers that are not self-employed, the calendar year 2020.

The SBA has provided guidance on how applicants should calculate their Second Draw Loan amount and revenue reduction, available here. Seasonal employers use the average total monthly payments for payroll from any 12-week period selected by the seasonal employer between February 15, 2019 and February 15, 2020.

Businesses that did not exist during the 1-year period preceding February 15, 2020 are eligible for the lesser of:

$2,000,000; and

the product obtained by multiplying (i) the business' average monthly payments for payroll costs during such time the business paid or incurred such costs by (ii) 2.5.

Q: What is included in "payroll costs" eligible for loan forgiveness?

A: "Payroll costs" eligible for loan forgiveness include compensation up to $100,000 (applies only to cash compensation, and not to non-cash benefits) on an annualized basis to employees with a principal place of residence in the U.S. in the form of:

gross salary, gross wages, gross commission, or similar compensation (including bonuses and hazard pay);

gross cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);

payment for vacation, parental, family, medical or sick leave;

allowance for dismissal or separation;

payment for the provision of employee or group life, disability, vision, or dental insurance benefits, including insurance premiums and retirement (does *not* include benefits *accelerated* from periods outside of the Covered Period); and

payment of state and local taxes assessed on the compensation of employees.

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The following caps on the amount of loan forgiveness apply to owner-employees and self-employed individuals' own payroll compensation*:

for borrowers that received an SBA loan number before June 5, 2020 and elect to use an 8-week covered period, the amount of loan forgiveness requested for *owner-employees* and *self-employed individuals'* payroll compensation is capped at 8-weeks' worth (8/52) of 2019 compensation (i.e., approximately 15.38% of 2019 compensation) or $15,385 per individual, whichever is less, in total across all businesses in which he or she has an ownership stake. For *self-employed individuals*, retirement and health insurance contributions are included in their net self-employment income and therefore *cannot* be separately added to their payroll calculation.

for borrowers using a covered period between 8 and 24 weeks, the amount of loan forgiveness requested for *owner-employees* and *self-employed individuals'* payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation (i.e., approximately 20.83% of 2019 compensation) or $20,833 per individual, whichever is less, in total across all businesses in which he or she has an ownership stake. For *self-employed individuals*, retirement and health insurance contributions are included in their net self-employment income and therefore *cannot* be separately added to their payroll calculation.

C-corporation owner-employees are capped at 2.5/12 of their 2019 employee cash compensation, state and local taxes paid and assessed on their compensation and employer retirement and health insurance contributions made on their behalf.

S-corporation owner-employees are capped at 2.5/12 of their 2019 employee cash compensation, state and local taxes paid and assessed on their compensation and employer retirement contributions made on their behalf, *but* employer health insurance contributions made on their behalf *cannot* be separately added because those payments are already included in their employee cash compensation.

Schedule C or Schedule F filers are capped at 2.5/12 of their 2019 net profit as reported on IRS Form 1040 Schedule C line 31. Retirement and health insurance contributions are included in their net self-employment income and therefore *cannot* be separately added to their payroll calculation. State and local taxes are *not* eligible for forgiveness.

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General partners are capped at 2.5/12 of their 2019 net earnings from self-employment that is subject to self-employment tax, which is computed from 2019 IRS Form 1065 Schedule K-1 box 14a (reduced by box 12 section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. Retirement and health insurance contributions are included in their net self-employment income and therefore *cannot* be separately added to their payroll calculation. Compensation is only eligible for forgiveness if the payments to partners are made during the Covered Period.

* Please note that per the SBA's August 24, 2020 Interim Final Rule, any employee with less than a 5% ownership interest in a C- or S-Corporation PPP borrower is not subject to the owner-employee compensation rule.

For a more in-depth discussion of payroll cost forgiveness, see the SBA's PPP Loan Forgiveness FAQs.

Q: What is not included in "payroll costs"?

A: "Payroll costs" may not include:

cash compensation of an individual employee in excess of an annual salary of $100,000 in one year, pro-rated during the Covered Period (i.e., for a 24-week covered period, a maximum of $46,154 per individual, or for an 8-week covered period, a maximum of $15,385 per individual);

any compensation of an employee whose principal place of residence is outside of the United States;

qualified sick leave wages or family leave wages for which a credit is allowed under sections 7001 or 7003 of the Families First Coronavirus Response Act; or

amounts paid to independent contractors.

The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, such as payment for provision of employee benefits consisting of group health care coverage, payment of taxes assessed on compensation, and employer contributions to defined-benefit or defined-contribution retirement plans.

Q: May a PPP borrower deduct, for Federal income tax purposes, those expenses incurred in its business for which the borrower received a covered PPP loan and for which expenses the borrower received forgiveness of such covered loan?

A: Yes. The Consolidated Appropriations Act, 2021, clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. It also clarifies that deductions

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are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness.

Q: May a taxpayer delay its portion of social security taxes if it received debt forgiveness under the CARES Act?

A: Yes, a taxpayer may delay these taxes if it had certain indebtedness forgiven under the CARES Act.

Q: Can the loan proceeds be used to pay *any* expenses in the borrower's discretion?

A: No. Proceeds can only be used for the following:

payroll costs (as noted above);

payments of interest on any business mortgage obligation on real or personal property (such as an auto loan) (which shall *not* include any prepayment of or payment of principal on a mortgage obligation) incurred before February 15, 2020*;

payments on business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020*;

utilities, including electricity, gas, water, transportation (meaning transportation utility fees assessed by state and local governments), telephone or internet access for which service began before February 15, 2020;

refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020;

covered operations expenditures (payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or account or tracking of supplies, inventory, records and expenses);

covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation);

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covered supplier costs (expenditures made to a supplier of goods for the supply of goods that are essential to the operations of the entity at the time at which the expenditures are made and are made pursuant to a contract, order, or purchase order: (i) in effect at any time before the loan's covered period; or (ii) with respect to perishable goods, in effect before or at any time during the loan's covered period); and

covered worker protection expenditures (operating or capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by DHHS, the CDC or OSHA, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning March 1, 2020 and ending the date on which the declared national emergency expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19. Some examples provided by the SBA are creation or expansion of a drive-through window facility; an indoor, outdoor, or combined air or air pressure ventilation or filtration system; a physical barrier such as a sneeze guard; expansion of additional indoor, outdoor, or combined business space; an onsite or offsite health screening capability; and personal protective equipment. These types of covered expenditures do not include residential real property or intangible property).

The SBA explicitly prohibits any eligible entity from using proceeds of a PPP loan for lobbying activities (as defined by the Lobbying Disclosure Act), lobbying expenditures related to state or local campaigns, and expenditures to influence the enactment of legislation, appropriations, or regulations.

To be eligible for full loan forgiveness, at least 60% of the loan proceeds must be used to pay payroll costs, and not more than 40% of the loan forgiveness amount may be attributable to eligible nonpayroll costs.

* The SBA issued an Interim Final Rule indicating that rent payments to a related party are eligible for forgiveness as long as (1) the amount of the loan forgiveness requested for rent or lease payments to the related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business and (2) the lease and the mortgage were entered into prior to February 15, 2020. Furthermore, the SBA indicated that mortgage interest payments to a related party are not eligible for forgiveness.

Q: If a borrower previously returned all or part of a prior PPP loan, can that borrower reapply for a PPP loan?

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A: Yes. The eligible borrower may reapply for a PPP loan for an amount equal to the difference between the amount retained and the maximum amount applicable, so long as the borrower has not already received forgiveness.

Q: If a borrower previously did not accept the full amount of a prior PPP loan, can that borrower request a modification to increase the amount of that prior PPP loan?

A: Yes.

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PPP Lending Criteria and Loan Forgiveness

Q: What will the banks require to make the loan?

A: The CARES Act requires a lender to confirm the following:

the borrower was in operation on February 15, 2020;

the borrower had employees for whom it paid salaries and payroll taxes; and

with respect to loan deferrals, the borrower was adversely impacted by COVID-19 (although this requirement is presumed).

The borrower must also submit a loan application and payroll documentation, acceptable to its lender. Lenders must also submit an SBA form Lender's Application. All forms and supporting documentation must be maintained for 6 years after the date the loan is forgiven or repaid in full, with the exception of PPP loans under $150,000 (borrowers must retain relevant employment records for 4 years and other records for 3 years).

For a PPP Second Draw Loan of more than $150,000 a borrower will likely be required to submit documentation that it meets the applicable revenue loss standard.

For a PPP Second Draw Loan of not more than $150,000 a borrower may submit a certification attesting that it meets the applicable revenue loss requirement (then, when it applies for forgiveness, the borrower will be required to produce adequate documentation that it met such revenue loss standard).

The SBA has provided guidance on how to calculate the PPP first draw loan and the Second Draw Loan amounts and what documents to provide in connection with those loan applications. The

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guidance for first draw loans can be found here and the guidance for Second Draw Loans can be found here.

Q: Are PPP loans eligible for loan forgiveness?

A: Yes. Under Section 1106 of the CARES Act, a borrower is eligible for forgiveness of part or all of the loan balance, subject to the adjustments and limitations described below, if the proceeds are used for eligible purposes (see below) and the borrower can provide required supporting documentation to demonstrate that it qualifies for forgiveness.

The SBA released the PPP Loan Forgiveness Application Form 3508, with instructions, which can be accessed here.

For certain eligible borrowers, a shorter Form 3508EZ is available with Instructions

For borrowers that received a loan of $50,000 or less, a streamlined Form 3508S is available with instructions.

The Consolidated Appropriations Act, 2021, established a simplified forgiveness application process for borrowers with PPP loans under $150,000. This new process requires borrowers to sign and submit a 1-page certification providing the number of employees retained because of the loan, the estimated amount of the loan spent on payroll costs, and the total loan amount. Borrowers with PPP loans under $150,000 will also be required to: (i) attest that they accurately provided the required certification and complied with the requirements of the PPP; and (ii) retain relevant employment records for 4 years and other records for 3 years. This form is not yet available.

For more information on loan forgiveness, see our separate FAQ available here. On August 5, 2020, the SBA also issued FAQs on PPP loan forgiveness available here.

Q: Which borrowers may use the Loan Forgiveness Application Form 3508EZ?

A: As indicated in the Form 3508EZ Instructions, a borrower may apply for forgiveness using Form 3508EZ **if at least one of the following are true:**

1. The borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form.
2. The borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period or the Alternative Payroll Covered Period compared to the period

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between January 1, 2020 and March 31, 2020 (for purposes of this statement, "employees" means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000); AND The borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee's hours that the borrower offered to restore and the employee refused).

3. The borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, "employees" means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000); AND The borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and the expiration of the national COVID-19 emergency by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Q: What will be the terms of loan forgiveness?

A: The CARES Act states that the loan obligations eligible for forgiveness include amounts expended for those obligations and services listed below that are either incurred or paid during the Covered Period (as defined, previously), but only where such obligation or service (in the case of mortgage obligations, rent and utilities) was an existing obligation as of February 15, 2020:

all payroll costs expended (see definition above); plus

any payment of interest on any business mortgage incurred by borrower on real or personal property (such as an auto loan) (not including any prepayment or payment of principal)*; plus

any payment of business rent on real or personal property obligated under a leasing agreement*; plus

any business utility payment for the distribution of electricity, gas, water, transportation (meaning transportation utility fees assessed by state and local governments), telephone, or internet access; plus

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covered operations expenditures (payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or account or tracking of supplies, inventory, records and expenses); plus

covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation); plus

covered supplier costs (expenditures made to a supplier of goods for the supply of goods that are essential to the operations of the entity at the time at which the expenditures are made and are made pursuant to a contract, order, or purchase order: (i) in effect at any time before the loan's covered period; or (ii) with respect to perishable goods, in effect before or at any time during the loan's covered period); plus

covered worker protection expenditures (operating or capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by DHHS, the CDC or OSHA, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning March 1, 2020 and ending the date on which the declared national emergency expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19. Some examples provided by the SBA are creation or expansion of a drive-through window facility; an indoor, outdoor, or combined air or air pressure ventilation or filtration system; a physical barrier such as a sneeze guard; expansion of additional indoor, outdoor, or combined business space; an onsite or offsite health screening capability; and personal protective equipment. These types of covered expenditures do not include residential real property or intangible property) (collectively, the "**Covered-Period Costs**").

The limitations and adjustments to forgiveness of the Covered Period Costs include the following:

1. The amount of forgiveness cannot exceed the principal balance of the loan, plus any accrued interest.
2. The amount of forgiveness will be reduced based on the reduction in number of full-time equivalent employees (as measured by the formula described below).

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3. The amount of forgiveness will also be reduced by the amount by which there is a reduction in total salary or wages for any employee that is in excess of 25% of the total salary or wages of such employee during the period from January 1, 2020 to March 31, 2020 (excluding reductions for employees making in excess of $100,000).

4. Increased wages paid to tipped workers are eligible for forgiveness.

5. Pursuant to the Paycheck Protection Program Flexibility Act, in order to be eligible for full loan forgiveness, at least 60% of the loan must be used for payroll costs, while not more than 40% of the loan forgiveness amount may be attributable to eligible non-payroll costs. If a borrower uses less than 60% of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60% of the forgiveness amount must be attributable to payroll costs.

6. The CARES Act, as amended by the Flexibility Act, includes a handful of safe harbors and exemptions (discussed in more detail below) which, if applicable, will not result in a reduction of the loan forgiveness amount. For example, borrowers have until the last day of the covered period to eliminate any full-time equivalent employee reductions referenced in subsection (2) above or the employee salary and wages reduction referenced in subsection (3) above. There are also exemptions based on employee availability and business activity. Additionally, there is an exemption for borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted.

7. The SBA plans to audit loans over $2 million (this includes borrowers that, together with their affiliates, received PPP loans with an original principal amount in excess of $2 million) before making a determination of forgiveness, and the SBA has reserved the right to review any PPP loan of any size at any time in its discretion.

* The SBA issued an Interim Final Rule indicating that rent payments to a related party are eligible for forgiveness as long as (1) the amount of the loan forgiveness requested for rent or lease payments to the related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business and (2) the lease and the mortgage were entered into prior to February 15, 2020. Furthermore, the SBA indicated that mortgage interest payments to a related party are not eligible for forgiveness.

In December 2020, the SBA issued Loan Necessity Questionnaires (Form 3509 for For-Profit Borrowers and Form 3510 for Non-Profit Borrowers), the purpose of which is to facilitate the collection of supplemental information that will be used by SBA loan reviewers to evaluate the good-

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faith certification made on the PPP loan application that economic uncertainty made the loan request necessary. Each for-profit and non-profit borrower that, together with its affiliates, received PPP loans with an original principal amount of $2 million or greater is required to complete this form and submit it, along with the required supporting documents, to its PPP lender. The completed form is due to the PPP lender within 10 business days of borrower's receipt from the PPP lender. The SBA has indicated in FAQ #53 (published on December 9, 2020) that a request to complete this form does not mean that SBA is challenging a borrower's certification. Instead, the SBA's assessment of a borrower's certification will be based on the totality of the borrower's circumstances. After a borrower submits its completed questionnaire, the SBA may request additional information, if necessary to complete its review. When additional information is requested, borrowers will have an opportunity to provide a narrative response to the SBA explaining the circumstances that provided the basis for their good faith loan necessity certification.

Q: How do I calculate the amount by which forgiveness of the Covered Period Costs will be reduced (under subsection (2), above) if I do not fully maintain my workforce?

A: The Covered Period Costs shall be reduced by multiplying the amount of the Covered Period Costs by the Reduction in Number of Employees. The "**Reduction in Number of Employees**" shall be calculated by dividing the (i) average number of full-time equivalent employees per week employed by borrower during the Covered Period by (ii) at the election of borrower (not including seasonal employers, as determined by the SBA): (y) the average number of full-time equivalent employees per week employed by the borrower during the period beginning on February 15, 2019 and ending on June 30, 2019 or (z) the average number of full-time equivalent employees per week employed by borrower during the period beginning on January 1, 2020 and ending on February 29, 2020. Seasonal employers must use either of the preceding periods or a consecutive 12-week period between May 1, 2019 and September 15, 2019; however, a seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount *must* use *the same* 12-week period as the reference period for calculation of any reduction in the amount of loan forgiveness. The same reference period must be used for each employee.

In this paragraph, the "average number of full-time equivalent employees" is determined by calculating the total average weekly number of full-time equivalent employees for each pay period falling within a month. There are 2 methods for calculating a full-time equivalent employee (FTE). Option #1 is to take the average number of hours paid per week for each employee, divide by 40, and round to the nearest tenth. The maximum for each employee is capped at 1.0. Option #2 is to assign a 1.0 for employees who work 40 hours or more per week, and 0.5 for employees who work fewer hours. Borrowers may select only 1 of these 2 methods, and must apply that method consistently to all of their part-time employees.

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There are certain safe harbors and exemptions that may be applicable, meaning that certain reductions in FTEs may not result in a reduced amount of forgiveness.

Q: How does the borrower receive forgiveness on its PPP loan?

A: The CARES Act requires that, in order to be eligible for forgiveness, the borrower must apply to the lender by submitting:

The SBA's Loan Forgiveness Application Form 3508, which may be accessed here; or, for certain eligible borrowers, the SBA's shortened Form 3508EZ, which may be accessed here; or, for borrowers with loans of $50,000 or less, Form 3508S; or, for borrowers with loans under $150,000, a simplified forgiveness application form yet to be released by the SBA.

As applicable, documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings.

As applicable, for forgiveness of non-payroll costs, documentation including (1) the mortgage amortization schedule (and receipts or cancelled checks) or lender account statements from February 2020 and the covered months, (2) the current lease agreement (and receipts or cancelled checks) or lessor account statements from February 2020 and the covered months, (3) the utility invoices from February 2020 and those paid during the covered period (and receipts, canceled checks or account statements), (4) invoices, orders or purchase orders for covered operations expenditures paid during the covered period (and receipts, cancelled checks or account statements), (5) invoices, orders or purchase orders for covered property damage costs paid during the covered period (and receipts, cancelled checks or account statements and documentation that the costs were related to property damage and vandalism or looting due to public disturbances that occurred during 2020 and such costs were not covered by insurance or other compensation), (6) contracts, orders or purchase orders for covered supplier costs in effect at any time before the covered period (except for perishable goods, invoices, orders or purchase orders paid during the covered period (and receipts, cancelled checks or account statements) and (7) invoices, orders or purchase orders for covered worker protection expenditures paid during the covered period (and receipts, cancelled checks or account statements and documentation that the expenditures were used by the Borrower to comply with applicable COVID-19 guidance during the covered period).

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As applicable, certification from a representative of the business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the PPP guidelines for use.

The respective instructions to each of the loan forgiveness applications also itemize the documents that borrowers are required to maintain, but are not required to submit unless requested.

A borrower must retain all records relating to its PPP loan application, PPP loan, and loan forgiveness application for 6 years after the date the loan is forgiven or repaid in full, with the exception of PPP loans under $150,000 (borrowers must retain relevant employment records for 4 years and other records for 3 years).

For a PPP Second Draw Loan of not more than $150,000 a borrower may submit a certification attesting that it meets the applicable revenue loss requirement (then, when it applies for forgiveness, the borrower will be required to produce adequate documentation that it met such revenue loss standard).

On May 22, 2020, the SBA issued its loan review procedures, which can be found here, and which were amended, in part, by the Interim Final Rule posted by the SBA on June 22, 2020. Furthermore, the SBA has indicated that lenders will be able to submit forgiveness applications on its PPP Loan Forgiveness Platform.

Q: What happens after the forgiveness period?

A: Any loan amounts not forgiven must be repaid by the borrower on or before the borrower's applicable maturity date (two years for those loans "made" prior to June 5, 2020 – unless the borrower and its lender mutually agree to extend to five years – and five years for those loans "made" on or after June 5, 2020) at an interest rate of 1.0%. The SBA has indicated that a PPP loan is considered to be "made" on the date that the SBA assigns a loan number to the PPP loan.

If a borrower submits a loan forgiveness application within 10 months after the end of its Covered Period, it will not have to make any payments of principal or interest on its loan before the date on which the SBA remits the loan forgiveness amount to the lender (or notifies the lender that no loan forgiveness is allowed). The lender will notify the borrower of the date that its first payment is due.

If a borrower does not submit its loan forgiveness application within 10 months after the end of its Covered Period, or if the SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due.

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Q: Will a borrower's PPP loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?

A: No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

1. the borrower made a good faith, written offer to restore the reduced hours of such employee;
2. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;
3. the offer was rejected by such employee; and
4. the borrower has maintained records documenting the offer and its rejection.

Q: Will a borrower's PPP loan forgiveness amount be reduced if the borrower is unable to rehire individuals who were employees of the borrower on February 15, 2020?

A: In calculating its loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employees during the Covered Period, as long as the borrower is able to document, in good faith, the following:

1. an inability to rehire individuals who were employees of the borrower on February 15, 2020; and
2. an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020, or, with respect to a covered loan made on or after December 27, 2020, the last day of the covered period.

Further, borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. The documents that borrowers should maintain to show compliance with this exemption include the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

Q: Will a borrower's PPP loan forgiveness amount be reduced if the borrower is unable to return to the same level of business activity as the borrower was operating at before February 15, 2020?

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A: No. A borrower is exempted from the loan forgiveness reduction arising from a proportional reduction in full-time equivalent employees during the Covered Period, as long as the borrower is able to document, in good faith, an inability to return to the same level of business activity such borrower was operating at before February 15, 2020 due to compliance with requirements established or guidance issued by HHS, the CDC or OSHA, related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirements related to COVID-19 during the period beginning March 1, 2020 and ending December 31, 2020, or, with respect to a covered loan made on or after December 27, 2020, the last day of the covered period.

Such documentation must include copies of applicable COVID-19 requirements or guidance for each business location and relevant borrower financial records.

This exemption includes both direct and indirect compliance with such COVID-19 requirements or guidance.

Q: Will a borrower's PPP loan forgiveness amount be reduced if the borrower fired an employee for cause during the Covered Period?

A: No.

Q: Will a borrower's PPP loan forgiveness amount be reduced if an employee voluntarily resigned during the Covered Period?

A: No.

Q: Will a borrower's PPP loan forgiveness amount be reduced if an employee requests and receives a reduction in its hours during the Covered Period?

A: No.

Q: If a borrower restores reductions made to employee salaries and wages or FTE employees by no later than December 31, 2020 (or, with respect to a covered loan made on or after 12/27/2020, the last day of the covered period), can the borrower avoid a reduction in its loan forgiveness amount?

A: Yes. If certain employee salaries and wages were reduced by more than 25% between February 15, 2020 and April 26, 2020 (the safe harbor period), but the borrower eliminates those reductions by December 31, 2020 (or, with respect to a covered loan made on or after 12/27/2020, the last day of the covered period) or earlier, then the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required.

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Similarly, if a borrower eliminates any reductions in FTE employees occurring during the safe harbor period by December 31, 2020 (or, with respect to a covered loan made on or after 12/27/2020, the last day of the covered period) or earlier, then the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required.

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PPP Application Process

Q: Is there a deadline to apply for a PPP loan?

A: Yes. The last day on which a lender can obtain an SBA loan number for a PPP loan or PPP Second Draw Loan is **March 31, 2021**. The SBA will not issue a loan number unless and until a completed loan application has been submitted and reviewed. This means that a borrower will need to have submitted a completed PPP loan application well ahead of this deadline in order for the SBA to have sufficient time to review the loan application and issue an SBA loan number prior to this March 31, 2021 deadline.

Q: How do small businesses apply for a PPP loan?

A: PPP loans are made through an SBA-approved lender and are guaranteed by the SBA. If the business has a relationship with a lender, it should immediately contact that lender to see if that lender is making PPP loans. The business should immediately begin working with an SBA-approved lender to confirm eligibility and to start the application process. You can find the link to the current PPP loan application here. The application for a Second Draw Loan can be found here.

Economic Injury Disaster Loans (EIDL) and Emergency Economic Injury Grants (EIDL Grants)

*As of February 3, 2021, the SBA's website indicates that it is still accepting EIDL loan applications from all eligible applicants experiencing economic impacts due to COVID-19.

The December 27, 2020 Consolidated Appropriations Act extended the EIDL Grant period through December 31, 2021. It also allocated an additional $20 billion to Targeted EIDL Advance program for eligible entities located in low-income communities. As of February 3, the SBA website has not yet

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been updated to reopen the link to the EIDL Grant application. Instead, the SBA website indicates that the SBA will reach out to those applicants who qualify for the Targeted EIDL Advance program. Specifically, the SBA will first reach out (via email) to EIDL applications that already received a partial EIDL Advance (between $1,000 - $9,000) with instructions to determine eligibility and to submit documentation.

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Q: What is an Economic Injury Disaster Loan?

A: The SBA's EIDL program provides small businesses with working capital loans of up to $2 million to help overcome the temporary loss of revenue as the result of a declared disaster. The CARES Act set out new rules that make it easier for small businesses that were damaged by closures, or had other losses, due to the coronavirus to apply for and receive loans quickly.

As of February 3, 2021, the SBA's website indicates that it is still accepting EIDL loan applications from all eligible applicants experiencing economic impacts due to COVID-19.

While the original cap was $2 million, prior SBA communications indicate that, due to the large volume of applications, the initial EIDL loan disbursements will be limited to $150,000.

The December 27, 2020 Consolidated Appropriations Act extended the EIDL Grant period through December 31, 2021. It also allocated an additional $20 billion to Targeted EIDL Advance program for eligible entities located in low-income communities. As of February 3, 2021, the SBA website has not yet been updated to reopen the link to the EIDL Grant application. Instead, the SBA website indicates that the SBA will reach out to those applicants who qualify for the Targeted EIDL Advance program. Specifically, the SBA will first reach out (via email) to EIDL applications that already received a partial EIDL Advance (between $1,000 - $9,000) with instructions to determine eligibility and to submit documentation.

Q: What is the Targeted EIDL Advance Program?

A: The Consolidated Appropriations Act, 2021, allocated an additional $20 billion to a Targeted EIDL Advance program for eligible entities located in low-income communities. An eligible entity can apply for an EIDL loan and receive a Targeted EIDL Advance in the amount of $10,000 in the form of an EIDL Grant within 21 days of the request. The borrower will be required to certify to the SBA, under penalty of perjury, that it is eligible to apply. The EIDL Grant funds can be used for maintaining payroll, providing sick leave to employees, rent or mortgage payments, and paying other obligations that cannot be paid due to lost revenue.

To be eligible for a Targeted EIDL Advance ($10,000 EIDL Grant), the entity must:

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apply for an EIDL loan;

be located in a low-income community (as defined in section 45D(e) of the Internal Revenue Code of 1986);

have suffered an economic loss of greater than 30% (defined as the amount by which the gross receipts declined during an 8-week period between 3/2/20 and 12/31/21 – relative to a comparable 8-week period immediately preceding 3/2/20 or during 2019 – or, as determined by the SBA for a seasonal business);

employ not more than 300 employees; and

not be an agricultural enterprise.

If an eligible entity previously received an EIDL Grant in an amount less than $10,000 it may receive a Targeted EIDL Advance in the amount equal to the difference between $10,000 and the amount of the previously received EIDL Grant. The SBA will give first priority to these eligible entities that previously received an EIDL Grant less than $10,000. The SBA website indicates that the SBA will reach out to those applicants who qualify for the Targeted EIDL Advance program. Specifically, the SBA will first reach out (via email) to EIDL applications that already received a partial EIDL Advance (between $1,000 - $9,000) with instructions to determine eligibility and to submit documentation. Then, the SBA will reach out to those who applied for EIDL assistance on or before December 27, 2020 but did not receive an EIDL Advance due to lack of program funding. All applicants will be asked to submit an IRS Form 4506-T to allow the SBA to request tax return information on the applicant's behalf.

Q: Are there other special provisions that make it easier to get an EIDL loan based on the coronavirus?

A: The CARES Act has simplified the process for EIDL applications for coronavirus loans. For example:

The SBA will waive personal guarantees on advances and loans below $200,000.

The SBA will waive pledge of collateral on advances and loans below $25,000.

The SBA will waive the test as to whether you can get credit elsewhere.

The SBA will waive the usual requirement that you needed to be in business for a year before the declaration.

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The SBA will rely on your credit score instead of the usual "determination of ability to repay." If you have trouble with a credit score, the SBA has authority to determine if a reasonable alternative can be used.

Q: What kinds of businesses can qualify and what proof do they need that they qualify?

A: In addition to sole proprietors (with or without employees) and independent contractors, small businesses, cooperatives and employee owned businesses, and Tribal small businesses with 500 or fewer employees are eligible for EIDLs.

Also, small business concerns and small agricultural cooperatives that meet the applicable size standard for the SBA are also eligible, as well as most private non-profits of any size.

Further, agricultural enterprises with not more than 500 employees are eligible for an EIDL loan and/or EIDL Grant. Agricultural enterprises include those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries (as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

In advance of disbursing the EIDL Grant, the SBA must verify that the entity is an eligible applicant for an EIDL. To do this, applicants must certify with the SBA, under penalty of perjury, that they are eligible, and provide any information (including tax records) that the SBA determines to be necessary.

Q: Are there any types of entities that are not eligible for an EIDL loan or EIDL Grant?

A: Yes, the following applicants are ineligible for an EIDL loan or EIDL Grant.

Engaged in any illegal activity (as defined by Federal guidelines).

Principal of the applicant with a 50% or greater ownership interest is more than 60 days delinquent on child support.

Presents live performances, sale of products, any depictions of displays of a prurient sexual nature (directly or indirectly).

Derives more than 1/3 of gross annual revenue from legal gambling activities.

Is in the business of lobbying.

Is a state, local or municipal government entity and cannot be a member of Congress.

Is in a speculative or investment business (as defined by Federal guidelines).

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Is in the business of lending or loan packaging.

Q: Do SBA affiliation rules apply when determining eligibility for an EIDL loan or EIDL Grant?

A: Yes.

Q: If a business receives an EIDL and/or an EIDL Grant, can it *also* get a PPP loan?

A: Yes. Whether the business has already received an EIDL unrelated to Coronavirus or a Coronavirus-related EIDL and/or an EIDL Grant, it may also apply for a PPP loan.

Also, a business cannot use the EIDL *for the same purpose* as its PPP loan. For example, if the business used the EIDL to cover payroll for certain workers in April, it *cannot* use a PPP loan for payroll for those same workers in April, although it could use it for payroll in March or for different workers in April.

Per the SBA's Procedure Notice issued on June 19, 2020:

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was *not* used for payroll costs, then its EIDL loan is *not* required to be refinanced with its PPP loan;

if a business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, and its EIDL loan was used for payroll costs, then its PPP loan *must* be used to refinance the full amount of its EIDL loan; and

if a business received an SBA EIDL loan *before* January 31, 2020 or *after* April 3, 2020, then its EIDL loan may *not* be refinanced with its PPP loan.

The amount of the EIDL loan to be refinanced does *not* include the amount of any EIDL "advance" (also referred to as an EIDL "grant") received by the business, because the EIDL advance does not need to be repaid.

CARES Act updates

Husch Blackwell's CARES Act resource team is reviewing the updates to the Act carefully and continues to develop content to help clients determine how best to access and assess the available assistance.

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Disclaimer: The issues discussed above are under further review, and guidance is not complete. Please continue to check back as we continue to update regularly.

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[1] Employee-based size standards can be found on the SBA website.

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[2] Employee-based and revenue-based size standards can be found on the SBA website.

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