

LEGAL UPDATES

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FAQ for Lenders: Paycheck Protection Program (PPP) Loans

Disclaimer: This information is subject to forthcoming SBA regulations. We continue to monitor those developments, and will update this information as additional guidance becomes available. The SBA and the Treasury have continued to post guidance and regulations.

This information is a summary only and is provided as of its date. All clients are encouraged to read and review the Interim Final Rules for more specifics.

This FAQ is intended to help answer Lender specific questions on making and entering into PPP Loans under the CARES Act. Please also see the additional Borrower perspective FAQs on the Husch Blackwell LLP website and for questions specific to forgiveness of PPP Loans.

Updated July 24, 2020

LENDER ISSUES RELATED TO PAYCHECK PROTECTION PROGRAM (PPP) LOANS UNDER THE CARES ACT

Q: What is the Application Process?

A: PPP Loans will be made through an SBA-approved Lender and will be guaranteed by the SBA. If the business has a relationship with a Lender, it should immediately contact that Lender to see if that Lender will be making PPP Loans. The business should immediately begin working with an SBA-approved Lender to confirm eligibility and to start the application process. The SBA has released regulations making clear that Lenders can use their internal forms and portals so long as they are asking the same questions and requesting the same information as the SBA Application.

The PPP Application, Regulations and other guidance is posted on the Treasury's website.

The SBA has also begun posting the same information and some additional forms on its website.

Q: What Lenders can make PPP Loans under the CARES Act?

A:

Lenders already approved by the SBA to make 7(a) loans.

The following types of Lenders so long as they are not currently designated as in “Troubled Condition” by or subject to a formal enforcement action addressing unsafe or unsound lending practices with their primary federal regulator:

Any federally insured depository institution or federally insured credit union;

Any Farm Credit System institution (Other than the Federal Agricultural Mortgage Corporation) as defined in 12 USC 2002(a) that applies the requirements of the Bank Secrecy Act and its implementing regulations;

Any depository or non-depository financing provider that:

- Originates, maintains, and services business loans or other commercial financial receivables and participation interests;
- Applies the requirements of Bank Secrecy Act;
- Has been operating since February 15, 2019; and
- Has originated, maintained or serviced at least \$50,000,000 in business loans or other commercial receivables during a consecutive 12 month period in the last 36 months;
- Or is a service provider to any insured depository institution that has a contract to support such institution’s lending activities in accordance with 12 USC 1867(c) and is in good standing with the appropriate federal banking agency.

*Additional Guidance from the SBA states that a non-bank Lender is eligible to be a PPP Lender if it has originated, maintained or serviced more than \$10,000,000 in business loans or other commercial financial receivables during a 12-month period in the last 36 months, if the non-bank Lender is:

- A community development financial institution;
- *Or* a majority minority-, women, or veteran/military-owned Lender.

- Such Lenders that meet this \$10,000,000 threshold, but not the \$50,000,000 threshold should leave blank the attestation on SBA Form 3507 and instead include an attestation stating “Lender attests that it has originated, maintained, or serviced more than \$10,000,000 in business loans or other commercial financial receivables during a **consecutive 12 month period in the past 36 months.**”

Q: Are Lenders required to submit any special forms or paperwork with the Application?

A: Yes.

All Lenders must Submit Form 2484 with each PPP Borrower Application.

In addition to Form 2484, Federally Insured Depository Institutions, Federally Insured Credit Unions, Farm Credit System Institutions that were not previously SBA Lenders but meet the criteria set forth in the Interim Final Rule to be PPP Lenders, must submit Form 3506, the Lender application.

In addition to Form 2484, Non-Bank and Non-Insured Depository Institution that were not previously SBA Lenders but meet the criteria set forth in the Interim Final Rule to be PPP Lenders, must also submit Form 3507.

Q: What paperwork is required to document these PPP Loans?

A: Please see the following forms:

PPP Borrower Application SBA Form 2483;

All Lenders must submit Form 2484;

If not previously an SBA approved Lender, depending on the type of Lender, either Form 3506 or Form 3507; see above question;

Note that in accordance with a SBA Procedural Notice effective July 6, 2020, the termination date set forth in Section 8 or Section 19 in each such form (as applicable) is extended from “July 1, 2020” to “August 9, 2020.”

Promissory Note SBA Form 147 or the Lender’s own form of promissory note as either form is permitted;

The SBA has stated that if a Lender processed and submitted an application prior to all of these forms being available, they do not need to resubmit;

SBA Form 1502 (an excel spreadsheet available for download on page 3 of the below linked July 13, 2020 Procedural Notice) for Lenders to report PPP disbursements and fees due to the Lender pursuant to the CARES Act. SBA Form 1502 must be filed by the later of (1) May 29, 2020 or (2) 10 calendar days after the disbursement or cancellation of the PPP Loan. Additionally, Lenders must continue reporting on each PPP Loan until the PPP Loan is forgiven or paid in full. The Lender must submit monthly PPP 1502 reports on or before the 15th of each month; provided that for July 2020, there is a grace period to July 17, 2020. The SBA provided this updated Procedural Notice on Form 1502 on July 13, 2020. In order for the Lender to receive its processing fee:

The SBA provided this updated Procedural Notice on Form 1502 on July 13, 2020.

In order for the Lender to receive its processing fee:

- PPP Loan must be fully disbursed;
- PPP Loan must not be cancelled before disbursement; and
- PPP Loan was not voluntarily cancelled and repaid after disbursement.

The process to file forgiveness applications is discussed below.

In addition to the Treasury webpage listed in the above question, forms have been posted on the SBA website.

Q: What percentage of PPP Loans are guaranteed by the SBA?

A: 100% of amount not forgiven (see discussion on forgiveness, below); however, at least 60% of the forgiven amount must have been used for payroll.

Q: Are PPP Loans secured?

A: No.

Q: Are PPP Loans under the CARES Act limited to a certain timeframe?

A: Yes.

Applications for a PPP Loan must be submitted in time for the SBA to issue a loan number by August 8, 2020.

Q: What is the maximum principal amount of the PPP Loans?

A: Up to \$10,000,000.

The formula for determining the amount is the lesser of (1) \$10,000,000; and (2) 2.5 times the average monthly payroll costs (see below for definition) incurred during the one-year period before the date on which the loan is made.

Please note that for seasonal employers, as determined by the SBA, the measurement period is either (1) the 12-week period beginning February 15, 2019 or (2) March 1, 2019 to June 30, 2019, at the election of the Borrower. Per an Interim Final Rule from the SBA, a seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019.

If the business was not operating during the period from February 15, 2019 until June 30, 2019, the relevant measurement period is January 1, 2020 through February 29, 2020.

In addition, if a business took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020 and wants to refinance that loan into a PPP Loan, the outstanding amount of the EIDL loan can be added to the amount of the PPP Loan. Amount may be limited by prior PPP Loans previously received by Borrower during covered period (February 15, 2020 to and including June 30, 2020).

See Interim Final Rules for examples of calculation.

Q: What is the maximum interest rate Lender can charge on a PPP Loan?

A: 1.0%

Q: What is the maximum maturity for a PPP Loan?

A:

For Borrowers obtaining PPP loans on or after June 5, 2020, the maturity date of such loans must be at least 5 years.

The maturity date for existing PPP loans disbursed prior to June 5, 2020 may remain at 2 years. However, this amendment provides that Lenders and Borrowers shall not be prohibited from “mutually agreeing to modify the maturity terms” of an existing PPP loan. Borrowers with PPP loans

obtained prior to the date of this amendment will likely approach their Lenders about such a modification.

Q: What underwriting is a Lender required to do for a PPP Loan?

A:

Review Borrower Application.

Confirm receipt of Borrower certifications contained in the Applications.

It is the Borrower's responsibility to determine if any of the affiliation rules apply to them.

Confirm receipt of information demonstrating Borrower had employees for whom Borrower paid salaries and payroll taxes on or around February 15, 2020.

Confirm dollar amount of average monthly payroll costs for preceding calendar year by reviewing the payroll documentation submitted with application.

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.

If Borrower uses a third-party payroll processing service, Lender should request 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, including:

- Schedule R (Form 941);
- Allocation Schedule for Aggregate Form 941 Filers, attached to the payroll provider's Form 941;
- Employer's Quarterly Federal Tax Return, if available;
- *If the above are not available*, the Borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes.

Follow applicable Bank Secrecy Act ("BSA") requirements:

Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP Loans.

Not required to re-verify existing customers unless otherwise indicated by institution's risk-based approach to BSA compliance.

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.

If entity not presently subject to BSA compliance, required to establish compliance program.

Review Application Form.

Q: What liability does a Lender have for failure of a Borrower to comply with the PPP requirements or Lender's underwriting and due diligence actions?

A:

Lenders may rely on certifications of the Borrower in order to determine eligibility and to rely on specified documents provided by the Borrower to determine qualifying loan amount and eligibility for forgiveness.

This includes a Borrower's representation on the PPP Application that the "current economic uncertainty makes this loan request necessary to support the ongoing operations of the [Borrower]."

Lenders held harmless for Borrowers' failure to comply with program criteria.

Administrator cannot take enforcement action or impose penalties if the Lender has received a Borrower attestation.

The general anti-fraud provisions and penalties of the SBA statute still apply.

Q: Can the Lender submit an application for approval for a Borrower that is involved in bankruptcy proceedings at the time the application is made?

A: No, if the Borrower or the owner of the Borrower is involved in bankruptcy proceedings at the time of the application, that business is not an eligible Borrower for a PPP Loan. Additionally, if the Borrower becomes involved in a bankruptcy proceeding after the application, but before funds are disbursed, it is the Borrower's obligation to inform the Lender and the Lender must not disburse the funds to the Borrower. The Lender may rely on the Borrower's representations regarding its or an owner's involvement in bankruptcy proceedings at the time of the application.

Q: Can the Lender accept electronic signature on PPP Loan Applications or related documents?

A: Yes; however, the authorized representative is signing on behalf of the Borrower and each owner of 20% or more of the applicant's equity, so if more than one signatory is necessary, contact your bank for an additional signature form.

Lenders may accept any electronic signatures that comply with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

Q: Can PPP Loans be sold on the secondary market?

A: Yes, once the PPP Loan is fully disbursed, the PPP Loan may be sold on the secondary market at par, premium or discount. The SBA will not collect any fee for any guarantee sold on the secondary market, according to Lender guidelines posted by the U.S. Treasury Department on its website on March 31, 2020. The SBA provided this Procedural Notice regarding Whole Loan Sales, which includes compliance with 13 CFR § 120.432(a), except for PPP Loans only, the SBA's prior written consent is not required. Any PPP Loans sold must be sold only to Lenders that have signed SBA Form 750, SBA Form 3506 or SBA Form 3507 (depending on type of Lender). The originating Lender for PPP Loans is deemed to meet the good standing and satisfactory performance standards in 13 CFR § 120.433. The originating Lender must provide the following information to the SBA's Office of Credit Risk Management at PPPLoanSales@sba.gov immediately upon the sale:

Name of Purchaser

Information of the Loan:

SBA Loan Number

Borrower Name

Original Loan Amount

Current Principal Balance

Maturity Date

Q: Can PPP Loans be syndicated or participated?

A: Yes, the SBA has provided this Procedural Notice addressing the sale of participating interests in PPP Loans. The Notice states that the sale of participations must comply with 13 CFR § 120.432(b), except that SBA's prior written consent is not required for PPP Loans. Participations of up to 100% of the principal balance are permitted. All participating Lenders must have a signed SBA Form 750, SBA Form 3506 or SBA Form 3507 (depending on type of Lender). The originating Lender for the participated loan must continue to hold the note, loan documents and retain all servicing rights. The originating Lender is the only party that the SBA will deal with for advance purchases of PPP Loans and PPP Loan forgiveness, as well as be the party that is eligible for the guarantee purchase of the PPP

Loan by the SBA. The originating Lender is deemed to meet the good standing and satisfactory performance standards in 13 CFR § 120.433. The originating Lender must provide prior written notice of the sale of a participating interest to the SBA's Office of Credit Risk Management at PPPLoanParticipation@sba.gov.

Q: Are there restrictions on the types and amounts of fees and expenses that the Lender may charge to the Borrower or to the SBA?

A: Yes.

The SBA will reimburse the Lender for "processing" based on the principal amount of the Loan at the time of disbursement, as follows:

5.00% up to not including \$350,000;

3.00% from \$350,000 to, but not including \$2,000,000; and

1.00% from \$2,000,000 and up.

Such reimbursement shall be paid by the SBA within 5 days of the loan disbursement.

The SBA provided this Procedural Notice regarding the Processing Fee Payment Process. Lenders must use SBA Form 1502 (download form from link on page 4 of Procedural Notice) to report and request the processing fee from the SBA. Form 1502 is due by the later of May 29, 2020 or 10 calendar days after disbursement or cancellation of the PPP Loan. Lenders may also use the FTA Lender Portal for the process of submitting Form 1502. More information on enrollment in the FTA Lender Portal is on the above Procedural Notice.

Agents that assist eligible Borrower to prepare an application may not collect fees in excess of the limits established by the SBA, which are separate from the above processing fees. Agent fees cannot be paid by Borrower or out of loan proceeds, but must be paid by the Lender from the Lender fees.

Agent fees cannot exceed:

1.00% for loans up to and not including \$350,000;

0.50% from \$350,000 to, but not including \$2,000,000; and

0.25% from \$2,000,000 and up.

Q: What other limits are applicable to the terms of a PPP Loan?

A:

Deferral of payments of principal and interest until the date on which the Lender receives payment of the forgiven portion of the Borrower's PPP Loan. The Borrower must then begin repaying any unforgiven amount of the PPP Loan over the remaining term of the PPP Loan.

Interest accrues during the deferment period, but must not be required to be paid until after the expiration of the deferral period.

For PPP Loans disbursed on or after June 30, 2020, the Borrower has until the five year maturity date to repay the unforgiven portion of the PPP Loan

No prepayment penalty.

Lenders must make one disbursement of the full PPP Loan amount. Multiple draws are not permitted. Loans that have not been disbursed due to Borrower's failure to provide final loan documentation within 20 calendar days of the loan approval must be cancelled by the Lender. However, loan increases permitted by the Interim Final Rule on Loan Increases related to payroll costs for partner compensation in partnerships or increases based on the alternative date periods for seasonal employers are permitted. The PPP Loan cannot be increased if the Lender's initial SBA Form 1502 report on the PPP Loan has been submitted to SBA, or after the date the first SBA Form 1502 was required to be submitted to SBA.

If proceeds of a PPP Loan are being used to refinance an EIDL loan, such funds should be sent directly to the SBA, not to the Borrower.

Q: How do PPP Loans affect Lender capital requirements?

A: The CARES Act provides that PPP Loans shall be given a risk weight of 0% with respect to Federal banking or National Credit Union Administration Board applying capital requirement under their respective risk-based capital requirements.

Q: Can a director or officer of a Lender who is also the owner of a business receive a PPP Loan?

A: SBA guidance states that an otherwise eligible business owned in whole or in part by an outside director or holder of less than 30% equity interest in the PPP Lender may still obtain a PPP Loan from that Lender of which the individual is a director or equity owner. However, this does not apply to a director or owner who is an officer of key employee of the PPP Lender. The business of course may instead obtain a PPP Loan from a different Lender if it cannot meet these requirements.

Q: What amounts of a PPP Loan can be forgiven?

A: For questions about how to determine amount of forgiveness and eligibility for forgiveness, see *the Interim Final Rule on Forgiveness and for additional information, Husch Blackwell's FAQ on PPP Forgiveness*.

Q: How does loan forgiveness of a PPP Loan work for Lenders?

A: The CARES Act outlined two processes for forgiveness of PPP Loans. To date, the SBA Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, as modified in accordance with the PPP Flexibility Act, only discusses the **second** option outlined below. That same Interim Final Rule states that additional guidance on advance purchase of PPP Loans is forthcoming.

Option 1:

Lender may request that the SBA purchase expected forgiveness of a PPP Loan or pool of PPP Loans at the end of week 7 of the covered period

Lender must submit a report to SBA including:

- Original Submitted PPP Loan Application and related materials
- Detailed narrative explaining:
 - Assumptions in determining forgiveness amount, including any information obtained from the Borrower
 - Payroll tax filings
 - Cancelled checks
 - Other payment receipts
 - Basis for these assumptions
 - Alternative assumptions considered and why disregarded

SBA will purchase within 15 days of receiving the report and finding that the expected forgiveness amount is reasonable

Option 2:

Borrower applies to Lender for loan forgiveness using the Borrower Forgiveness Application; either Form 3508 and Instructions or if eligible, Form 3508EZ and Instructions.

Pursuant to the SBA Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, as modified in accordance with the PPP Flexibility Act, the Lender must:

- Confirm receipt of signed Loan Forgiveness Application Form;
- Confirm receipt of Borrower documentation verifying payroll costs and other qualified non-payroll costs during the “covered period” (as selected by the Borrower in accordance with the Forgiveness Application);
- Confirm the Borrower’s calculations on the Forgiveness Application; and
- Specifically confirm that the Borrower calculated Line 10 of the Loan Forgiveness Calculation Form correctly, by dividing the eligible payroll costs by 0.60.

The Lender must perform a good faith review of the Borrower’s calculations and supporting documentation.

The Lender is not required to independently verify the reported information so long as the Borrower submits the documentation supporting its forgiveness request and attests that it accurately verified the eligible forgiveness amounts.

The Lender must issue a decision to the SBA within 60 days of receipt of a complete Forgiveness Application; it may decide on forgiveness approval, in whole or in part; denial (upon SBA direction) or denial without prejudice due to a pending SBA review of such loan.

- A denial without prejudice means that the Borrower may re-apply for forgiveness upon conclusion of the SBA’s review, unless the SBA determines that the Borrower is ineligible for a PPP Loan.

The Lender must submit to the SBA the Borrower Forgiveness Application, including the Loan Forgiveness Calculation Form and PPP Schedule A, and if completed, the PPP Borrower Demographic Information form.

The Lender must apply for payment from the SBA of the forgiveness amount at the time the Forgiveness Application is submitted to the SBA.

The SBA then has 90 days to review the Lender’s determination of forgiveness eligibility.

Lender is responsible for informing the Borrower of the amount of forgiveness paid by the SBA to the Lender. If the forgiveness amount is less than the amount the Lender submitted to the SBA, the Lender must also notify the Borrower of the amount of the Lender’s decision. SBA SOP 50 57, as

amended, applies to Lenders regarding servicing requirements for PPP Loans, which includes servicing the loan after submission of forgiveness decision.

Q: How do I file forgiveness applications from my Borrowers with the SBA?

A: The SBA provided this Procedural Notice on July 23, 2020. SBA announced that it partnered with a financial services technology provider, Goldschmitt-CRI, to make available a secure platform to accept loan forgiveness decisions, supporting documentation, and requests for forgiveness payments. This platform enables Lenders to upload required data and documentation, monitor the status of the forgiveness request, and respond to SBA in case of an inquiry or if SBA selects the loan for review. SBA will post a link to the PPP Forgiveness Platform on its website. The PPP Forgiveness Platform will go live and begin accepting Lender submissions on August 10, 2020, subject to extension if any new legislative amendments.

Q: Is there a due date for the Forgiveness Application?

A:

As of the date of this publication, nothing in the Forgiveness Application, the Interim Final Rules or the SBA FAQs requires the Borrower to apply for forgiveness.

A Borrower may submit a loan forgiveness application before the maturity date of the loan – including before the end of the Applicable Covered Period (defined herein) – if the Borrower has used all of the loan proceeds for which the Borrower is requesting forgiveness. However, it should be noted that if a Borrower applies for forgiveness before the end of the Applicable Covered Period, and it has reduced any employee’s salaries or wages in excess of 25%, the Borrower *must* account for the excess salary reduction for the full 8-week or 24-week covered period.

If a Borrower submits a loan forgiveness application before the end of the Applicable Covered Period, or within 10 months after the end of its Applicable 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 Applicable 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.

Lenders may have included terms that require the Borrower to apply for forgiveness and to do so within a certain period of time.

Q: What happens if a Lender decides to deny PPP Loan Forgiveness?

A: If the Lender determines and reports to the SBA that forgiveness should be denied, the Lender must notify the Borrower of its decision in writing.

Q: Can a Borrower appeal a Lender's decision to deny forgiveness?

A: Yes. Within 30 days of written notice of denial from the Lender, the Borrower may request that the SBA review the Lender's decision. Within 5 days of receipt, the Lender must notify the SBA of the Borrower's request for review. The SBA will notify the Lender if the SBA declines a request for review. If the Borrower does not request SBA review, or if the SBA declines the request for review, the Lender is responsible for notifying the Borrower of the date on which the Borrower's first payment is due. If the SBA accepts a Borrower's request for review, the SBA will notify the Borrower and the Lender of the results of its review. If the SBA denies forgiveness in whole or in part, the Lender is responsible for notifying the Borrower of the date on which the Borrower's first payment is due.

Q: What happens if the Lender receives notice that the SBA is reviewing a PPP Loan?

A: The Lender must notify the Borrower within 5 business days of receipt of such notice. The Lender must submit the following information to the SBA within 5 days of receipt of such notice:

Borrower Application (SBA Form 2483);

Borrower Forgiveness Application (SBA Form 3508, Form 3508EZ or Lender's equivalent form) and supporting documentation;

A signed and certified transcript of account (it is unclear exactly what the SBA means by this);

A copy of the executed PPP Promissory Note; and

Any other documents requested by the SBA.

Q: If the SBA determines that a Borrower is not eligible for forgiveness, will the Lender still receive its processing fee?

A: No, additionally, if within 1 year of the PPP Loan being disbursed, the SBA reviews a PPP Loan and determines that the Borrower was ineligible for a PPP Loan from the outset, based on the CARES

Act or applicable rules or guidance available at the time of the Borrower's initial loan application, then the SBA will seek to clawback the processing fee paid to the Lender. However, a determination of Borrower ineligibility and clawback of processing fee will not impact the SBA's guaranty of the loan so long as the Lender complied with its underwriting responsibilities under Section III.3.b of the First Interim Final Rule.

Q: What happens to the amount of PPP Loan not forgiven?

A: If a Borrower is denied forgiveness in whole or in part, the amount of the loan not forgiven must be repaid by the Borrower on or before the 2-year or 5-year maturity date, as applicable. This applies only to loan forgiveness applications that are not reviewed by the SBA prior to the Lender's decision on the forgiveness application. A Borrower should also review its promissory note and the other loan documentation it executed in connection with its PPP Loan for any additional implications of a denial of forgiveness and specific repayment requirements.

If the SBA determines that the Borrower is ineligible for the PPP Loan or is ineligible for the loan amount or the loan forgiveness amount claimed by the Borrower, the SBA may pursue other available remedies.

Q: Are PPP Loans for existing customers considered new accounts for FinCEN Rule CDD purposes?

A: If the PPP Loan is made to an existing customer and the necessary information was previously verified, Lenders 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.

Q: Are there any timing rules on loan disbursements?

A: The Interim Final Rule on Disbursements was published on April 28, 2020. Except for loan increases for partnerships or seasonal employers (discussed below), the Lender must make one disbursement of the full loan amount within ten calendar days of the date that the SBA assigns the loan an SBA loan number, which is considered the date of approval. For SBA Loans that were approved prior to, but had not been disbursed by April 28, the Loan should have been disbursed within 10 calendar days of April 28. Loans that cannot not be disbursed within 20 calendar days of SBA loan approval because the Borrower did not submit additional, required information must be cancelled by the Lender and not disbursed. Any amounts of the Loan that are to refinance an EIDL loan should be sent by the Lender directly to the SBA and not to the Borrower.

On May 13, 2020, the SBA published the Interim Final Rule on Loan Increases that authorized Lenders to increase existing PPP Loans for partnerships or seasonal employers to include partner compensation as clarified in the Interim Final Rule posted on April 14 (relating to partner compensation) and the Interim Final Rule posted on April 28 (relating to seasonal employers). Partnerships that only included employee payroll costs in the calculation of the loan amount are permitted to increase the loan amount to include payroll costs for partner compensation based on the Interim Final Rule posted on April 14. Additionally, seasonal employers that received a PPP Loan prior to the Interim Final Rule published on April 28 containing the alternative time periods used for calculating the seasonal employer's average monthly payments, may increase their Loan amount to the maximum permitted by such alternative time periods.

The increased Loan amounts and disbursements must be made prior to Lender's submission of SBA Form 1502.