|  |  |
| --- | --- |
| **Release Date: April 14, 2020**  <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf> | **Paycheck Protection Program**  **Additional Criteria & Requirements**  **Interim Final Rule Summary** |
| **Background**  On April 2, 2020, the Small Business Administration (SBA) issued an Interim Final Rule implementing sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 1102 of the Act temporarily adds a new type of loan named the “Paycheck Protection Program” (PPP) to the SBA’s existing 7(a) Loan Program, and Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans. The Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely affected by the Coronavirus Disease 2019 (COVID-19) Emergency Declaration.  **Overview**  On the evening of April 14, 2020, the SBA released this third PPP Interim Final Rule (Rule). This Rule supplements the first PPP Interim Final Rule with guidance for self-employed individuals who file a Form 1040, Schedule C. This Rule also provides long-awaited guidance on whether a Lender can make loans to its officers, directors, and key employees, among others. As a whole, the Rule supplements implementation of sections 1102 and 1106 of the CARES Act and the SBA requests public comment on all parts of the Rule, just as it has with the two prior Interim Final Rules.  **Timing**  Effective Date: The Interim Final Rule is effective on the date of publication in the Federal Register. (As of publication of this summary, the Rule has not been published in the Federal Register).  Applicability Date: The Interim Final Rule covers applications submitted under the Paycheck Protection Program through June 30, 2020, or until the current $349,000,000,000 in funding is exhausted.  Comment Period: Comments on the Interim Final Rule must be received within 30 days of publication in the Federal Register. (As of publication of this summary, the Rule has not been published in the Federal Register). Once published, you may submit comments through the Federal eRulemaking Portal: <http://www.regulations.gov>  **Individuals with Self-Employment Income who File a Form 1040, Schedule C**  I have income from self-employment and file a Form 1040, Schedule C. Am I eligible for a PPP Loan?  In general, you are eligible for a PPP loan if you:   * Were in operation on February 15, 2020; * Are an individual with self-employment income (such as a sole proprietor or independent contractor); * Have a principal place of residence is in the US; and * Filed or will file a Form 1040 Schedule C for 2019.   However, if you are a partner in a partnership, you’re not allowed to submit a separate application for yourself as a self-employed individual. Instead, the partnership should submit the application and the self-employment income of each general active partner may be reported as a payroll cost (up to $100,000 annualized). The Rule clarifies that partnerships are in fact eligible for PPP loans, but there must be only one PPP loan to cover the partnership and its partners. The SBA provides a variety of reasons for this, one of which is to help ensure that as many eligible borrowers get loans before the deadline. These rules also apply to an LLC filing taxes as a partnership.  All borrowers should be aware that participation in the PPP may affect eligibility for state-administered unemployment programs. SBA will issue additional guidance for individuals with self-employment income who:   * Were not in operation in 2019 but who were in operation on February 15, 2020, and * Will file a Form 1040 Schedule C for 2020.   How do I calculate the maximum amount I can borrow and what documentation is required?  The calculation depends on whether you have employees.  **If you don’t have employees, follow these steps:**   * Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount. If this amount is over $100,000, just use $100,000. If this amount is $0 or less, you are not eligible for a PPP loan. * Divide the amount in Step 1 by 12 to get the average monthly net profit amount. * Multiply the amount in Step 2 amount by 2.5. * Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you want to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).   Even if you haven’t filed your 2019 return with the IRS, you still have to fill it out to compute the amounts above and provide the following with your PPP loan application:   * 2019 Form 1040 Schedule C; * 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed; and * 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.   **If you have employees, follow these steps:**   * Calculate 2019 payroll by adding up all the following, as applicable:   + 2019 Form 1040 Schedule C line 31 net profit amount. If this amount is over $100,000, just use $100,000. If the amount is less than $0, use $0.   +   * + 2019 gross wages and tips paid to employees. To calculate this, use the 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other excluded fringe benefits, then subtract any amounts paid to any individual employee over $100,000 annualized and anything paid to any employee whose principal place of residence is outside the US; and   +   * + 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms). * Divide the total from Step 1 by 12 to get the average monthly amount. * Multiply the amount in Step 2 amount by 2.5. * Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you want to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).   Even if you haven’t filed your 2019 return with the IRS, you still have to fill it out to compute the amounts above and provide the following with your PPP loan application:   * 2019 Form 1040 Schedule C; * 2019 Form 941 (or other tax forms or equivalent payroll processor records containing similar information); * State quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable; and * A payroll statement or similar documentation from the pay period that covered February 15, 2020 to establish you were in operation on February 15, 2020.   How can PPP loans be used by individuals with self-employment income who file a 2019 Form 1040, Schedule C?  The proceeds of a PPP loan have to be used for the following:   * Owner compensation replacement, calculated based on 2019 net profit (see above). * Payroll costs for employees whose principal place of residence is in the US, if applicable. * Certain business payments. You must have claimed or be entitled to claim a deduction for these expenses on your 2019 Form 1040 Schedule C for them to be able to use the proceeds for them during the covered period.   + Mortgage interest payments (but not any prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business);   + Business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business); and   + Business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). * Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness). * Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can still apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.   The SBA determined that it’s appropriate to limit the use of loan proceeds to those items listed above for which the borrower actually made expenditures in 2019. It believes that this limitation is consistent with the borrower certification required by the Act “to support the ongoing operations,” and will help make sure that the finite appropriations for these loans are directed toward the intended purpose of maintaining existing operations and payroll, and not for business expansion.  Although the CARES Act makes businesses in operation on February 15, 2020 eligible for PPP loans, the SBA determined that self-employed individuals will need to rely on their 2019 Form 1040 Schedule C, which provides verifiable documentation on expenses for calendar year 2019.  For individuals with self-employment income from 2019 for which they have filed or will file a 2019 Form 1040 Schedule C, expenses between January 1, 2020 and February 14, 2020 may not be considered because of the lack of verifiable documentation.  SBA will issue additional guidance for individuals with self-employment income who:   * Were not in operation in 2019 but who were in operation on February 15, 2020, and * Will file a Form 1040 Schedule C for 2020.   Are there any other restrictions on how I can use PPP loan proceeds?  Yes. At least 75% of the PPP loan proceeds have to be used for payroll costs. For purposes of determining this (but not for forgiveness purposes), the amount of any refinanced EIDL is included.  What amounts shall be eligible for forgiveness?  Forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness, however, depends on the amount spent over the covered period on:   * Payroll costs including salary, wages, and tips, up to $100,000 of annualized pay per employee (for eight weeks, a maximum of $15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums); * Owner compensation replacement, calculated based on 2019 net profit as described above, with forgiveness limited to eight weeks (8/52). This excludes any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA; * Payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business mortgage payments); * Rent payments on lease agreements in force before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business rent payments); and * Utility payments under service agreements dated before February 15, 2020 to the extent they are deductible on Form 1040 Schedule C (business utility payments).   What documentation will I be required to submit to my lender with my request for loan forgiveness?   * Borrower certification required by Section 1106(e)(3) of the CARES Act, to substantiate the request for loan forgiveness; * Evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period if you used loan proceeds for those purposes. * If you have employees, you also have to submit Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions). * The 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the eight-week covered period.   **Clarification Regarding Eligible Businesses**  Are eligible businesses owned by directors or shareholders of a PPP Lender permitted to  apply for a PPP Loan through the Lender with which they are associated?  The SBA has determined that SBA regulations (including 13 CFR 120.110 and 120.140) shall not apply to prohibit an otherwise eligible business which is owned (in whole or part) by an outside director or holder of a less than 30% equity interest in a PPP Lender from obtaining a PPP loan from the PPP Lender. This is conditioned on the eligible business owned by the director or equity holder following the same process as any similarly-situated customer or account holder of the Lender. Favoritism by the Lender in processing time or prioritization is prohibited. Of course, lenders still have to comply with all other applicable state and federal regulations, as well as internal bank policies.  Importantly, this does not apply to a director or owner who is also an officer or key employee, but these employees are allowed to get a PPP Loan from a different lender. The Rule also reminds lenders that the “Authorized Lender Official” designated for each PPP Loan is subject to the limitations in the Lender Application Form, which states in part: “Neither the undersigned Authorized Lender Official, nor such individual’s spouse or children, has a financial interest in the Applicant [Borrower].”  Are businesses that receive revenue from legal gaming eligible for a PPP Loan?  A business that is otherwise eligible for a PPP Loan is not considered ineligible due to its receipt of legal gaming revenues if the existing standard in 13 CFR 120.110(g) is met or the following two conditions are satisfied:   1. The business’s legal gaming revenue (net of payouts but not other expenses) did not exceed $1 million in 2019; and 2. Legal gaming revenue (net of payouts but not other expenses) comprised less than 50% of the business’s 2019 total revenue. Businesses that received illegal gaming revenue are categorically ineligible.   **Requirements for Certain Pledges of PPP Loans**  Do the requirements for loan pledges under 13 CFR 120.434 apply to PPP loans pledged for borrowings from a Federal Reserve Bank (FRB) or advances by a Federal Home Loan Bank (FHLB)?  No. Pursuant to SBA regulations at 13 CFR 120.435(d) and (e), a pledge of 7(a) loans to a FRB or FHLB does not require SBA’s prior written consent or notice to SBA. The additional requirements set forth in 120.434 shall also not apply. This would mean, for example, that SBA would not have to approve loan documents or require a multi-party agreement among SBA, the lender, and others. | |
| |  | | --- | | **ACTION PLAN**   * Review all SBA Interim Final Rules in full and determine whether the Bank will change its PPP loan process, given these additional details. * If so, determine how these changes might affect the Bank procedurally, financially, strategically, and from regulatory reporting and monitoring perspective. * Document how the Bank will manage and implement any changes to its business lending process. * Train Compliance Staff, Lending Staff, Senior Management, and any other involved parties on relevant changes to the lending process. * Contact the Compliance Alliance Hotline with any additional questions. | | |