

A Checklist for Lenders Participating in the Paycheck Protection Program

Based on Information Released by the Federal Reserve Board on April 9, 2020¹

The Paycheck Protection Program (PPP), established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and administered by the Small Business Administration (SBA), provides relief to small businesses. Under this program, small businesses can obtain forgivable loans cover payroll, rent, utilities and other expenses.

On April 2, 2020, the SBA published an Interim Final Rule regarding the PPP, setting forth important information for lenders participating in the program.

Additionally, on April 9, 2020, the Federal Reserve Board announced the creation of the Paycheck Protection Program Lending Facility (PPPLF). The PPPLF is intended to bolster the PPP by supplying liquidity to the financial institutions originating PPP loans. Under the PPPLF, the Federal Reserve Banks will lend to these financial institutions on a non-recourse basis, taking PPP loans as collateral. The Federal Reserve Banks will cease extending credit under the PPPLF on September 30, 2020, unless extended by the Federal Reserve Board and Treasury Department.

Below are two checklists for lenders considering participation in the PPP. The first checklist outlines core requirements for PPP lenders based on the April 2 Interim Final Rule. The second checklist outlines core requirements for the PPPLF.

Checklist for Lenders Interested in Participating in the PPP

Eligibility

All SBA Section 7(a) lenders are automatically approved to make PPP loans on a delegated basis.

The following types of lenders have been determined to meet the criteria and are eligible to make PPP loans unless (1) they currently are designated in Troubled Condition by their primary federal regulator or (2) are subject to a formal enforcement action with their primary federal regulator that addresses unsafe or unsound lending practices:

- Any federally insured depository institution
- Any federally insured credit union
- Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C. 2002(a) that applies the requirements under the Bank Secrecy Act (BSA) and its implementing regulations as a federally regulated financial institution

¹This checklist is based on information available as of April 9, 2020. It is intended to provide information on developments in the law only. It is not legal advice and does not constitute an opinion of Norton Rose Fulbright US LLP. These terms can be adjusted at the discretion of the Small Business Administration, Federal Reserve Board and the Secretary of Treasury.

Eligibility (continued)

- Any depository or non-depository financing provider that:
 - Originates, maintains, and services business loans or other commercial financial receivables and participation interests
 - Has a formalized compliance program
 - Applies the requirements under the BSA as a federally regulated financial institution
 - Has been operating since at least February 15, 2019; and
 - Has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivable during a consecutive 12-month period in the past 36 months, or
 - Is a service provider to any insured depository institution that has a contract to supply such institution's lending activities in accordance with 12 U.S.C. Section 1867(c) and is in good standing with the appropriate Federal banking agency.

Application

- The new lender application form for (1) Federally Insured Depository Institutions, (2) Federally Insured Credit Unions, and (3) Farm Credit System Institutions is available here (SBA Form 3506).
 - These institutions will be automatically qualified on transmission of this form (SBA Form 3506) unless they currently are designated in Troubled Condition by their primary federal regulator or are subject to a formal enforcement action by their primary federal regulator that addresses unsafe or unsound lending practices.
- The new lender application form depository or non-depository institutions is available here (SBA Form 3507).

Loan Underwriting Obligations

Lenders must comply with the applicable obligations included in the SBA's PPP April 2, 2020 interim final rule. This PPP guidance provides that temporarily supersedes any conflicting Loan Program Requirements, as defined in 13 CFR 120.10. Pursuant to the PPP interim final rule, each lender must:

- Review the "Paycheck Protection Program Application" form (SBA Form 2483) and confirm receipt of borrower certifications contained therein.
- Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020.
- Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application.
- Follow the BSA requirements:
 - Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP.
 - Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Among other requirements, note that this generally requires identifying and reporting certain suspicious activity to the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

When evaluating an applicant's eligibility for a PPP loan, lenders are not required to:

- Apply the "credit elsewhere test" under 13 CFR 120.101.
 - Make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates.
 - Comply with "What are SBA's lending criteria?" under 13 CFR 120.150.
-

Reliance on Borrower Loan Forgiveness Documentation

Lenders are not required to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs.

The SBA will hold harmless any lender that relies on such borrower documents and attestation from a borrower.

Lenders that identify errors in a borrower's calculation or material lack of substantiation in the borrower's supporting documents are expected to work with the borrower to remedy the issue.

Processing Borrower Applications

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

Lenders must submit the "Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty" (SBA Form 2484) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

Fees Paid to Lenders

The SBA will pay lenders fees for processing PPP loans, which will be based on the balance of the financing outstanding at the time of final disbursement, in the following amounts:

- 5% for loans of not more than \$350,000
- 3% for loans of more than \$350,000 and less than \$2,000,000
- 1% for loans of at least \$2,000,000

Lenders may not collect any fees from the applicant.

Agent Fees

Lenders will pay the agent fees out of the fees received from the SBA (agents may not collect any fees from the applicant). The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan, including referral to the lender, may not exceed:

- 1% for loans of not more than \$350,000
- 0.50% for loans of more than \$350,000 and less than \$2 million
- 0.25% for loans of at least \$2 million

Fee Waivers

- There will be no up-front guarantee fee payable to SBA by the Borrower.
- There will be no lender's annual service fee ("on-going guaranty fee") payable to SBA.
- There will be no subsidy recoupment fee.
- There will be no fee payable to SBA for any guarantee sold into the secondary market.

Sale of PPP Loans

A PPP loan may be sold on the secondary market after the loan is fully disbursed. The loan may be sold at a premium or a discount to par value.

The SBA will issue further guidance regarding any advance purchase for loans sold in the secondary market.

Purchase of Loans by the SBA

A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period (February 15, 2020 through June 30, 2020). The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans.

To submit a PPP loan or pool of PPP loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report must include:

- The “Paycheck Protection Program Application Form” (SBA Form 2483) and any supporting documentation submitted with such application
- The “Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty” (SBA Form 2484) and any supporting documentation
- A detailed narrative explaining:
 - The assumptions used in determining the expected forgiveness amount
 - The basis for those assumptions
 - Alternative assumptions considered, and why alternative assumptions were not used
 - Any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation
- Any additional information the SBA may require to determine whether the expected forgiveness amount is reasonable

The SBA will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the SBA receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.

PPPLF Checklist

Eligible Borrowers

Currently, all *depository institutions* that originate PPP loans are eligible to borrow under the PPPLF. The Federal Reserve Board, however, is working to expand eligibility to other lenders that originate PPP loans in the near future.

Applicable Lending Reserve Bank

Eligible borrowers participate in the PPPLF through the Reserve Bank in the District where the eligible borrower is located.

Terms and Conditions for PPPLF Lending

Eligible Collateral and Collateral Valuation

Only PPP loans guaranteed by the SBA are eligible to serve as collateral for the PPPLF.

PPP loans pledged as collateral to secure extensions of credit under the PPPLF will be valued at the principal amount of the PPP loan.

Principal amount

The principal amount of an extension of credit under the PPPLF will be equal to the principal amount of the PPP Loan pledged as collateral to secure the extension of credit.

Maturity

- The maturity date of an extension of credit under the PPPLF will equal the maturity date of the PPP Loan pledged to secure the extension of credit.
 - The maturity date of the PPPLF’s extension of credit will be accelerated if the underlying PPP Loan goes into default and the eligible borrower sells the PPP Loan to SBA to realize on the SBA guarantee.
 - The maturity date of the PPPLF’s extension of credit also will be accelerated to the extent of any loan forgiveness reimbursement received by the eligible borrower from the SBA.
-

Rate	Extensions of credit under the PPPLF will be made at a rate of 35 basis points.
Non-recourse	Extensions of credit under the PPPLF are made without recourse to the borrower.
Regulatory Capital Treatment	<p>Pursuant to the CARES Act, a PPP loan will be assigned a risk weight of 0% under the risk-based capital rules of the federal banking agencies.</p> <p>On April 9, 2020, the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued an Interim Final Rule to allow banking organizations to neutralize the effect of PPP loans financed under the PPPLF on leverage capital ratios.</p>
Fees	None.