



## CARES Act Assistance Checklist

### I. SBA PAYCHECK PROTECTION PROGRAM (PPP)

- Per the SBA, applications loans may be submitted starting 4/3/20.
- Application: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>
- Loans will be administered by third-party lenders.

Eligible Entity<sup>1</sup> - To qualify, an entity must be least one of the following:

- A small business concern (as defined in the Small business Act).
- Any business concern; 501(c)(3); 501(c)(19) veterans' organization; or Tribal business
  - With not more than 500 employees;<sup>2</sup> or
  - the applicable size standard for its NAICS code (if higher than 500).
- Sole proprietor; independent contractor; or other self-employed individual.
- An entity that:
  - Has more than one physical location;
  - Employs no more than 500 employees per physical location; and
  - Is assigned a NAICS code beginning with 72 (accommodation and food services) at the time of disbursement.

Affiliation Waiver<sup>3</sup> - Not required to count affiliated businesses as part of the entity if one of the following:

- Business with not more than 500 employees that is assigned a NAICS code beginning with 72 (accommodation and food services) at the time of disbursement.
- Approved franchise on the SBA's Franchise Directory.
- Receives financing through the Small Business Investment Company (SBIC) program.

Religious Exemption<sup>4</sup> – Faith-based organizations are not considered affiliates of other organizations if the relationship is based on religious teaching or belief or otherwise constitutes a part of the exercise of religion.

<sup>1</sup>Sec. 1102(a)(2)(36)(D)(i)-(iii)

<sup>2</sup>For determining whether a business concern employees not more than 500 employees, "the term 'employee' includes individuals employed on a full-time, part-time, or other basis." Sec. 1102(a)(2)(36) (D)(v).

<sup>3</sup>Sec. 1102(a)(2)(36)(D)(iv).

<sup>4</sup>The SBA's Second Interim Final Rule exempted religious organizations from the affiliation rules and amended the text of 13 C.F.R. 121.103(b) to account for the religious exemption.

Affiliation Tests<sup>5</sup> – there are four tests for affiliation applicable to the Paycheck Protection Program:

- Affiliation based on ownership
  - A PPP applicant is an affiliate of an individual, concern or entity that owns or has the power to control more than 50% of the business's voting equity
  - A minority shareholder will be deemed in control by the SBA if the individual or entity has the power to prevent a quorum or otherwise block an action by the board of directors or the shareholders, unless the minority shareholder irrevocably waives or relinquishes any existing rights under 13 C.F.R. § 121.301(f)(1).
- Affiliation based on power to control in connection with:<sup>6</sup>
  - Stock options, convertible securities, and agreements to merge; or
  - An individuals', concerns', or other entities' ability to divest ownership interest through options, convertible securities, or agreements that appear to terminate control before actually doing so.
- Affiliation based on management<sup>7</sup> – Affiliation arises when:
  - A single individual, concern, or entity, or the management (e.g., President, CEO, managing members) of the applicant small business concern also controls the management of one or more other concerns; or
  - A single individual, concern, or entity controls the management of the applicant concern through a management agreement.
- Affiliation based on identity of interest<sup>8</sup>
  - Affiliation arises between close relatives<sup>9</sup>, defined as a spouse, a parent, or a child or sibling, or the spouse of any such person, with identical or substantially identical business or economic interests.

Lender Considerations for Eligibility<sup>10</sup>

- Business was operational as of 2/15/20; and
- Had employees for whom it paid salaries and payroll taxes, or paid independent contractors.

Borrower Certification<sup>11</sup> - A good faith certification that:

- Loan is necessary to support ongoing operations, due to uncertainty of current economic conditions;
- Funds will be used to retain workers and maintain payroll, lease, and utility payments; and  
Entity hasn't received (and doesn't have a pending application for) duplicative funds for the same uses from another PPP loan or other SBA program.

<sup>5</sup> The four affiliation tests arise from 13 C.F.R. § 121.301(f). The remaining affiliation tests listed under 13 C.F.R. § 121.301(f) were excluded, presumably intentionally, from the U.S. Department of the Treasury's Applicable Affiliation Rules fact sheet and the SBA's Second Interim Final Rule.

<sup>6</sup> 13 C.F.R. § 121.301(f)(1).

<sup>7</sup> 13 C.F.R. § 121.301(f)(2).

<sup>8</sup> 13 C.F.R. § 121.301(f)(3).

<sup>9</sup> 13 C.F.R. § 121.301(f)(4)(ii).

<sup>10</sup> Sec. 1102(a)(2)(36)(F)(ii)(II).

<sup>11</sup> Sec. 1102(a)(2)(36)(G)(i)(I)-(IV).

## II. SBA ECONOMIC INJURY DISASTER LOANS (EIDLs)

- Unlike PPP, administered directly through the SBA.
- Can apply immediately.
- Can request \$10,000 to act as a grant that need not be repaid, even if applicant is not approved.

Eligible Entity<sup>12</sup> - must qualify as at least one of the following:

- A small business concern (as defined in the Small business Act).
- A business with not more than 500 employees.
- An individual who operates as a sole proprietor (with or without employees), or as an independent contractor.
- A cooperative with not more than 500 employees.
- An ESOP (as defined in section 3 of the Small Business Act) with not more than 500 employees.
- A tribal small business concern with not more than 500 employees.
- A private nonprofit organization.

Emergency EIDL Grant<sup>13</sup> - any eligible entity that applies for an EIDL in response to COVID-19 during the covered period,<sup>14</sup> may request up to a \$10,000 advance, if:

- It self-certifies that it is an eligible entity (as described above);
- The funds are used to address any allowable purpose under 7(b)(2) of the Small Business Act.

Restrictions<sup>15</sup>

- Can't receive an EIDL and a PPP loan for the same purpose.
- Borrower who has an EIDL (received from 01/31/20 to the date on which covered loans are made available) for a purpose other than paying payroll costs and other obligations, can apply for a PPP loan, with an option to refinance that loan into the PPP loan up to the aggregate PPP cap of \$10,000,000.
  - The emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven under the PPP.

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<sup>12</sup> Sec. 1110(a)(2)(A)-(E).

<sup>13</sup> Sec. 1110(e).

<sup>14</sup> "Covered period" means from 01/31/20 – 12/31/20.

<sup>15</sup> Sec. 1102(a)(2)(36)(F)(iv); Sec. 1102(a)(2)(36)(Q).

<sup>16</sup> Sec. 4003(b)(1)-(3).

## III. LOANS FOR AIR CARRIERS AND BUSINESSES CRITICAL TO NATIONAL SECURITY

Eligibility<sup>16</sup> - must qualify as at least one of the following:

- Passenger air carrier.<sup>17</sup>
- Cargo air carrier.
- An eligible business<sup>18</sup> that is both:
  - Certified under 14 C.F.R. 145 (Repair Stations), and
  - Approved to perform inspection, repair, replace, or overhaul services.
- Ticket agents.<sup>19</sup>
- A business critical to maintaining national security.

Conditions<sup>20</sup>- All apply:

- Alternative credit not reasonably available at time of transaction.
- Intended obligation is prudently incurred.
- Loan is sufficiently secured or made at a rate that reflects the risk and, if possible, not less than analogous prevailing rate before the COVID-19 outbreak.
- Duration as short as possible, and not longer than 5 years.
- No stock buybacks on national securities exchange, unless contractually obligated as of the date of the Act, until one year after the loan has been repaid.
- Cannot pay dividends or other capital distributions regarding common stock until repaid or one year after origination.
- Maintain until 09/30/20, its employment levels as of 03/24/20, and retain no less than 90% of employees as of that date.
- Borrower must certify that it's: (i) created/organized in the US or under its laws; (ii) has significant operations in US; and (iii) has majority of its employees based in US.
- Losses incurred related to the COVID-19 pandemic jeopardize continued operations.
- The loan cannot be forgiven.

Financial Protection of Government<sup>21</sup> - Loan will be issued only if one of the following is met:

- For a company traded on a national securities exchange, the Secretary has received a warrant or equity interest in it.
- If not, the Secretary has received one of the following (in the discretion of the Secretary):
  - A warrant or equity interest; or
  - A senior debt instrument.

Limitations on Certain Employee Compensation<sup>22</sup> - All of the following apply until one year after the loan is repaid:

- No officer or employee whose total pay<sup>23</sup> exceeded \$425,000 in 2019 will:<sup>24</sup>
  - Receive more compensation than they received in 2019; or
  - Receive severance pay or other termination benefits, that exceeds twice their 2019 compensation.
- No officer or employee whose total comp exceeded \$3 million in 2019 may receive, during any consecutive 12-month period, total compensation above:
  - \$3,000,000; plus
  - 50% of the excess over \$3 million of the total compensation received in 2019.

<sup>16</sup> Sec. 4003(b)(1)-(3).

<sup>17</sup> "Air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." 49 U.S.C. 40102(2).

<sup>18</sup> An "eligible business" under this part, is defined as "an air carrier, or a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees under the CARES Act." Sec. 4002(4).

<sup>19</sup> "Ticket agent" means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation." 49 U.S.C. 40102(45).

<sup>20</sup> Sec. 4003(c)(2)(A)-(I).

<sup>21</sup> Sec. 4003(d).

<sup>22</sup> Sec. 4004(a).

<sup>23</sup> Total compensation "includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business." Sec. 4004(b).

<sup>24</sup> All references to 2019 mean calendar year 2019

## IV. LOANS FOR OTHER BUSINESSES (FEDERAL RESERVE PROGRAMS)

- \$454 billion in loans and loan guarantees, and other investments in, Fed programs to provide liquidity to the financial system.

### A. General Lending

#### Eligible Business:<sup>25</sup>

- A US business that hasn't otherwise received adequate economic relief in the form of loans or loan guarantees under the Act.

#### Restrictions<sup>26</sup> - Must agree to all of the following:

- No buybacks of borrower stock on national securities exchange, unless contractually obligated as of the date of the Act, until one year after repayment.
- No buybacks of borrower's parent's stock on national securities exchange, unless contractually obligated as of the date of the Act, for so long as the loan is outstanding.
- No dividends or other capital distributions regarding common stock until one year after repayment.
- Borrower will comply with the compensation limits set forth in Sec. 4004.<sup>27</sup>

### B. Assistance for Mid-Sized Businesses/Mainstreet Lending

- Loans subject to interest rate not higher than 2%.
- No principal or interest payments for first 6 months (or longer, at Secretary's discretion).<sup>28</sup>

#### Eligible Borrower:<sup>29</sup>

- Businesses (including nonprofits) with between 500 and 10,000 employees.

#### Certification<sup>30</sup> - Must certify all of the following:

- Uncertainty of economic conditions makes the loan necessary for ongoing operations of the recipient.
- Funds will be used to retain at least 90% of workforce, at full comp and benefits, until 9/30/20.
- Intent to restore at least 90% of workforce as of 2/1/2020 and restore all comp and benefits to workers no later than 4 months after end of CODIV-19 public health emergency.
- Borrower is domiciled and organized in US, and has significant operations and a majority of its employees in US.
- Borrower is not a bankruptcy debtor.
- Won't pay common stock dividends, or repurchase company or parent equity listed on a national securities exchange, unless contractually obligated as of 3/27/20, while the loan is outstanding.
- Won't outsource or offshore jobs for two years after repayment.
- Won't abrogate existing collective bargaining agreements for two years after repayment.
- Remain neutral in any union organizing effort for the loan term.

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<sup>25</sup> Sec. 4002(4).

<sup>26</sup> Sec. 4003(c)(3)(A)(ii).

<sup>27</sup>These limitations are outlined under Section III of this checklist: "Limitations on Certain Employee Compensation."

<sup>28</sup>4003(c)(3)(D)(i).

<sup>29</sup>4003(c)(3)(D)(i).

<sup>30</sup>4003(c)(3)(D)(i)(I)-(X)