

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

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CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY:JMW SCANNED BY: KB 1/11

UNITED STATES OF AMERICA, ex rel.
MACKINAC CENTER FOR PUBLIC
POLICY,

Plaintiff,

CASE NO.

1:22-cv-28

Hala Y. Jarbou
U.S. District Judge

vs.

JUDGE

THE MICHIGAN EDUCATION
ASSOCIATION, and THE MICHIGAN
EDUCATION SPECIAL SERVICES
ASSOCIATION,

**COMPLAINT AND DEMAND FOR
JURY TRIAL
FILED IN CAMERA AND UNDER
SEAL PURSUANT TO 31 U.S.C.
§3730(b)(2)**

Defendants.

Plaintiff-Relator The Mackinac Center for Public Policy ("The Mackinac Center"), on behalf the United States of America, for its Complaint against Defendants, The Michigan Education Association (the "MEA") and The Michigan Education Special Services Association ("MESSA"), states the following:

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false statements and claims made by Defendants or their agents and employees in violation of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "FCA").

2. This action seeks to recover money lost when the Defendants fraudulently obtained millions of dollars in forgivable federal loans distributed under the Paycheck Protection Program (the "PPP").

3. The PPP is a loan program created by the federal Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020). The purpose of the PPP was to help certain businesses, self-employed workers, sole proprietors, and non-profit organizations continue paying their workers in spite of economic difficulties and uncertainties created by COVID-19.

4. The CARES Act clearly stated which types of employers were eligible to apply for PPP loans. Furthermore, the United States Small Business Administration ("SBA"), which was responsible for administering the PPP program, published interim final rules, FAQs, and borrower application forms that further clarified which employers were eligible for PPP loans.

5. Non-profit corporations registered under sections 501(c)(5) and 501(c)(9) were not among the employers eligible to receive PPP loans.

6. The MEA is a 501(c)(5) corporation, and MESSA is a 501(c)(9) corporation. Thus, Defendants were not eligible to receive PPP loans.

7. Nonetheless, Defendants submitted applications to the SBA in which they affirmatively certified that they *were* eligible to receive PPP loans.

8. As a direct result of their false and fraudulent statements, Defendants collectively obtained more than \$12 million in PPP loans.

9. As a direct result of the Defendants' false and fraudulent statements, the United States Government paid fees to process the Defendants' fraudulent loan applications.

10. In so doing, Defendants clearly and undeniably violated the False Claims Act, entitling the United States Government to statutory penalties and treble damages.

II. THE PARTIES

11. Plaintiff-Relator The Mackinac Center is a research and educational institute that advances the principles of free markets and limited government. The Mackinac Center is a

Michigan non-profit corporation registered under 501(c)(3) of the Internal Revenue Code. The Mackinac Center's registered office is in Midland, Michigan.

12. The Michigan Education Association is a labor union representing about 120,000 teachers, education support professionals and higher-education employees throughout the state of Michigan. The MEA is a domestic non-profit corporation registered under section 501(c)(5) of the Internal Revenue Code. The MEA's registered agent is Michael Shoudy, and the MEA's registered office is located at 1350 Kendale Blvd, East Lansing, MI 48823.

13. The Michigan Education Special Services Association is a voluntary employees' benefit association that provides insurance benefits to its members. MESSA is a domestic nonprofit corporation registered under section 501(c)(9) of the Internal Revenue Code. MESSA's registered agent is Ross J. Wilson, and whose registered office is located at 1475 Kendale Blvd, East Lansing, MI 48823.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

15. This Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732 because Defendants reside and transact business in this judicial district, and because Defendants engaged in an act proscribed by 31 U.S.C. § 3729 in this judicial district by knowingly presenting false or fraudulent claims for payment or approval, and/or knowingly making false records or statements material to false or fraudulent claims.

16. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(b) because both Defendants reside in and transact business in this judicial district, and

because a substantial part of the events or omissions giving rise to these claims occurred in this judicial district.

IV. THE PPP LOAN PROGRAM

17. The Paycheck Protection Program (the “PPP”) is a loan program created by the federal Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), Pub. L. No. 116-136, § 1102, 134 Stat. 286–294 (2020). Although the CARES Act was amended in May 2020 and on multiple occasions thereafter, the Defendants’ violations of the False Claims Act occurred in April 2020, and thus all citations to the CARES Act in this Complaint refer to the CARES Act as originally enacted on March 21, 2020.

A. Overview of the PPP

18. Congress created the PPP to help certain businesses, self-employed workers, sole proprietors, and non-profit organizations continue paying their workers in spite of the economic hardships and uncertainty created by COVID-19. To that end, Congress appropriated \$349,000,000 for the PPP loan program in the CARES Act. *Id.* at § 1107(a)(1), 134 Stat. 301.

19. The CARES Act placed the task of administering many aspects of the PPP on the United States Small Business Administration (the “SBA”). The SBA published interim final rules relating to the PPP on April 2, 2020, which had an effective date of April 15, 2020. (Exhibit 1) The SBA also published a Borrower Application Form on April 2, 2020 (Exhibit 2), various FAQs, and other informational and governing documents on its website. See <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program> (last accessed on January 4, 2022).

20. Under the PPP, eligible employers could apply for loans worth up to two months’ of their average monthly payroll costs from the last year, plus an additional 25% of that amount.

CARES Act, Pub. L. No. 116-136, § 1102(a)(2)(E), 134 Stat. 289 (2020). All loans were subject to a \$10 million cap. *Id.*

21. Eligible employers could apply for a PPP loan by filling out the SBA's Borrower Application Form and submitting it to an SBA-approved lender. (**Exhibit 2**). If the application was approved, the lender would issue the approved loan amount to the applicant. Each loan issued under the PPP was guaranteed by the SBA. CARES Act, Pub. L. No. 116-136, at § 1112(a)(1), 134 Stat. 309 (2020).

22. When the lender disbursed payment under the program, the lender submitted SBA Form 1502 to the SBA seeking a payment of PPP Processing fees. SBA Procedural Notice No. 5000-20091 issued February 8, 2021 (**Exhibit 3**).

23. For First Draw PPP Loans made before December 27, 2020, the SBA paid the lender a one percent (1%) processing fee for loans of at least \$2,000,000. *Id.* at 1.

24. Recipients who used the PPP loan money for specified purposes and who met certain requirements could apply for loan forgiveness through their lender. The full loan amount would be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained

Paycheck Protection Program (PPP) Information Sheet: Borrowers (published 3/31/2020) (available at <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>); *See also* CARES Act, Pub. L. No. 116-136, § 1106(b), (d), 134 Stat. 298–299 (2020)

25. If the loan was forgiven, the SBA would issue payment to the lender for the amount of the forgiven loan. *Id.* at § 1106(c)(3), 134 Stat. 298.

26. Recipients who were not eligible for complete loan forgiveness were subject to a 1% interest rate and a 2-year repayment requirement. Paycheck Protection Program (PPP) Information Sheet: Borrowers (published 3/31/2020) (available at <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>).

B. Eligibility to Participate in the PPP Loan Program was Limited to Select Entities

27. Only the following organizations were eligible to receive PPP loans under the CARES Act as originally passed:

- “small business concerns, [and] any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) ... if the business concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of...(I) 500 employees; or (II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal concern operates” (Pub. L. No. 116-136, § 1102(a)(2)(D)(i), 134 Stat. 288);
- “sole proprietors, independent contractors, and self-employed individuals” who met certain requirements (*Id.* at § 1102(D)(ii)); and
- “[b]usiness concerns with more than 1 physical location ... that employ[] not more than 500 employees per physical locations of the business concern and that [are] assigned a North American Industry Classification

System code beginning with 72 at the time of disbursement...” could also apply for PPP loans (*Id.* at § 1102(D)(iii)).¹

28. Importantly, the CARES Act defines “non-profit organizations” as “an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” *Id.* § 1102(a)(2)(A)(vii), 134 Stat. 286 (emphasis added).

29. The SBA included the following statement regarding eligibility in its interim final rule published April 15, 2020, reiterating that only the following entities were eligible for PPP loans:

a. Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:

i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or

B. A tax-exempt nonprofit organization described in section

¹ Only businesses in the accommodation and food services industry are assigned a NAICS code beginning with 72.

501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

SBA Interim Final Rule, published April 15, 2020, located at 13 CFR Part 120, available at <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

30. Finally, the SBA's borrower application form also made it clear that only certain types of entities were eligible for PPP loans. The Borrower Application Form available in April of 2020 required applicants to "check" a box listing what type of entity they were. The only available selections were the following:

Check One: Sole proprietor Partnership C-Corp S-Corp LLC
 Independent contractor Eligible self-employed individual
 501(c)(3) nonprofit 501(c)(19) veterans organization
 Tribal business (sec. 31(b)(2)(C) of Small Business Act) Other

(Exhibit 2)

31. The CARES Act, the SBA interim final rules, and the SBA Borrower Application Form thus made it abundantly clear that only certain, specific types of entities were eligible for

PPP loans. Two types of entities that were clearly and unmistakably not eligible for PPP loans were non-profits registered under 501(c)(5) and 501(c)(9) of the Internal Revenue Code. Eligible non-profit entities were limited to those organized under section 501(c)(3) of the Internal Revenue Code.

V. DEFENDANTS FALSELY CERTIFIED THAT THEY WERE ELIGIBLE FOR PPP LOANS AND COLLECTIVELY OBTAINED MORE THAN \$12 MILLION IN FEDERAL MONEY.

32. The SBA Borrower Application Form required applicants to make the following certifications, among others:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- **The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted** that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).

(Exhibit 2) (emphasis added)

33. Even though the MEA is a 501(c)(5) corporation and MESSA is a 501(c)(9) corporation, both organizations submitted PPP loan applications in April 2020 in which they certified that they were “eligible to receive a loan under the rules in effect at the time this application is submitted.”

34. As a direct result of their false certifications, MESSA was approved for a \$6,130,300 PPP loan on April 28, 2020, and the MEA was approved for a \$6,420,500 PPP loan on April 29, 2020. **(Exhibit 4)**.

35. As a direct result of their false certifications, upon information and belief, the SBA paid the Defendants' lenders a processing fee in excess of \$100,000 for processing the Defendants' loan applications and disbursing payment under the PPP program.

36. MESSA's and MEA's false certifications resulted in a reduction of PPP loan funding available to eligible recipients.

37. In fact, many applicants who were eligible for PPP loans were unable to obtain or delayed in obtaining loans because the \$349,000,000 initially appropriated for the PPP was exhausted within just 13 days. *See* <https://www.pbs.org/newshour/politics/it-took-13-days-for-the-paycheck-protection-program-to-run-out-of-money-what-comes-next> (last accessed on January 4, 2022).

VI. THE MACKINAC CENTER DISCOVERS THAT THE MEA AND MESSA FRAUDULENTLY OBTAINED PPP MONEY

38. The SBA released data in July 2020 revealing the identity of most PPP loan recipients, as well as the amount of money each recipient received. (**Exhibit 4**).

39. The SBA did not release any information regarding a recipient's business type (e.g. 501(c)(3) corporation, tribal entity, etc.). Further, certain information was not provided pursuant to FOIA exemptions 4 and 6. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). Exemption 6 protects information when the disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

40. On July 6, 2020, the Detroit News reported that the MEA had received a \$6.4 million dollar PPP loan. (**Exhibit 5**) According to the Detroit News, MEA spokesman Doug Pratt made the following statement to the Detroit News:

“With 285 employees across Michigan, we’re proud of the fact that we’ve been able to do the right thing and continue to pay employees during the pandemic, despite uncertainty on the horizon...The PPP Program has helped us do that.” *Id.*

41. After learning that the MEA had obtained a PPP loan, The Mackinac Center conducted its own investigation. The Mackinac Center reviewed the SBA loan data to confirm the report, and in so doing also learned that MESSA had also received a PPP loan.

42. The Mackinac Center then reviewed Defendants’ filings with the IRS, which revealed that the MEA is a 501(c)(5) corporation and that MESSA is a 501(c)(9) corporation.

43. The Mackinac Center then filed a FOIA request with the SBA, requesting:

1. A copy of any applications for Paycheck Protection Program (“PPP”) loans by the Michigan Education Association (“MEA”) and Michigan Education Special Services Association (“MESSA”)...

....

2. Any documents in SBA’s possession which demonstrate that MEA and MESSA are eligible for PPP funding, despite being 501(c)(5) and 501(c)(9) organizations respectively.

3. Any documents in SBA’s possession which demonstrate that MEA’s and MESSA’s eligibility for PPP funding was not independently reviewed by the SBA.

4. Any documents provided to SBA that attest to MEA and MESSA maintain the non-profit status required to be eligible for PPP funding.

(Exhibit 6)

44. The SBA responded with a letter dated October 21, 2020. In relevant part, the SBA stated that “[a]ll publicly available information regarding PPP loans can be found at the following link: www.sba.gov/ppp....Please note, loan applications are filed and maintained with the Lender, and the Agency does not have those applications.” **(Exhibit 7)**

45. The Mackinac Center requested comment from the MEA's lender, Comerica Bank, but Comerica refused to comment.

46. The Mackinac Center then presented the MEA with some of its findings, and requested a comment. (**Exhibit 8**) MEA Spokesman Liz Boyd responded with the following statement on January 10, 2021 (**Exhibit 9**)

At the time of applying for the PPP loans, we believed doing so was the right decision given the guidelines available at the time and the tremendous uncertainty facing our organizations. However, as each organization independently prepared for the loan forgiveness application and reviewed final rules promulgated after the loans were funded, the organizations each believed we would be ineligible for forgiveness. As such, both MEA and MESSA paid back the PPP loans in full prior to the end of the calendar year.

47. After receiving the MEA's statement, The Mackinac Center reviewed the MEA's Form LM2 Labor Organization Annual Report. The Form LM2 is an annual report that labor organizations with more than \$250,000 in annual receipts must file with the U.S. Department of Labor. The MEA filed its LM2 on November 25, 2020. (**Exhibit 10**) The "period covered" by the LM2 was September 1, 2019 through August 31, 2020. (*Id.*, Box 2) Schedule 9 of the LM2 is entitled "Loans Payable." Under the heading of "Loans Obtained During Period C," the MEA listed a loan of \$5,604,200. Under the heading of "Loans Owed at End of Period E", the MEA revealed that it still owed \$5,604,200. (*Id.*, Schedule 9). This is clearly inaccurate, as the MEA's PPP loan was for \$6,420,500, and it also reveals that the MEA had not repaid its loan as of August 2020.

48. More tellingly, the SBA data regarding loans distributed with values over \$150,000, which was updated on March 3, 2021, states that the MEA did not repay its PPP loan until January 14, 2021 — four days after The Mackinac Center asked the MEA to comment on its investigation findings. (**Exhibit 4**, Line 407841).

49. The same SBA report does not provide any information suggesting that MESSA repaid its PPP loan. (**Exhibit 4**, Line 407860)

50. On November 29 2021, the MEA filed its LM2 for the period of September 1, 2020 through August 31, 2021. (**Exhibit 11**). Under the heading of “Loans Owed at Start of Period (B),” the MEA listed a loan of \$5,604,200. Under the heading of “Repayment During Period Cash (D)(1)”, the MEA revealed that it paid \$5,604,200, and claimed that it owed no more loans at the end of the period.

VII. CONCLUSIONS

51. As a result of its independent investigation, The Mackinac Center reached the following conclusions:

- i. The MEA and MESSA were ineligible for PPP funding.
- ii. In spite of the clear limitations on which employers were eligible to participate in the PPP program, the MEA and MESSA filed borrower application forms in which they falsely certified that they were eligible for PPP loans.
- iii. As a direct result of their false claims, Defendants misappropriated more than \$12 million in PPP funding.
- iv. When confronted with the MEA’s violation of the law, the MEA falsely claimed that it had returned the money. Four days later, the MEA actually did return the money to the SBA.
- v. There is no evidence to suggest that MESSA has yet returned its PPP funding.

52. At the conclusion of its investigation, and prior to filing this Complaint, The Mackinac Center disclosed its findings to the United States Attorney’s Office.

COUNT I
VIOLATION OF THE FALSE CLAIMS ACT
31 U.S.C. §§3729(a)(1)(A)-(B)

53. The Mackinac Center realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above as though fully set forth herein.

54. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, as amended.

55. 31 U.S.C. § 3730 authorizes a private person to “bring a civil action for violation of section 3729 for the person and for the United States Government.”

56. By virtue of the acts described above, including but not limited to falsely certifying that they were eligible for PPP funds, Defendants knowingly presented, or caused to be presented, false or fraudulent claims to the United States Government for payment or approval, in violation of 31 U.S.C. § 3729.

57. By virtue of the acts described above, including but not limited to falsely certifying that they were eligible for PPP funds, Defendants knowingly made or used, or caused to be made or used, false or fraudulent records or statements material to false or fraudulent claims for payment by the government, in violation of 31 U.S.C. § 3729.

58. By virtue of the acts described above, including but not limited to falsely certifying that they were eligible for PPP funds, Defendants presented a false claim for money to a lender, where the money was to be spent or used on the Government’s behalf or to advance a Government program or interest, and the Government has provided any portion of the money requested or will reimburse the lender for any portion of the money which is requested or demanded, in violation of 31 U.S.C. § 3729.

59. As a direct result of Defendants’ false certifications, MESSA obtained \$6,130,300 in PPP funding on April 28, 2020, and the MEA obtained \$6,420,500 in PPP funding on April

29, 2020. Defendants would not have received any money had they not falsely claimed they were eligible for funding.

60. As a direct result of the Defendants' false certifications, the SBA paid the Defendants' lenders substantial processing fees in excess of \$100,000.

61. Through the Defendants' actions, the United States has been injured and suffered damage in a substantial amount to be determined at trial.

62. Additionally, the United States is entitled to the maximum statutory penalty of not less than \$11,655 and not more than to \$23,331 for each incident of Defendants' unlawful conduct, pursuant to 31 U.S.C. § 3729(a)(1) and 28 C.F.R. § 85.5

63. The Mackinac Center's claim is not barred by the public disclosure provision in 31 U.S.C. § 3730 because Plaintiff-Relator is an "original source" of much of the information provided in this Complaint, as described in 31 U.S.C. §§ 3730(e)(4)(A)-(B). Although the simple fact that the Defendants had received PPP funding was publicly disclosed by the SBA, The Mackinac Center, through its extensive independent investigation, obtained knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and voluntarily provided the information to the Government before filing this action.

64. In the alternative, even if The Mackinac Center does not qualify as an original source, the Government has the power, under 31 U.S.C. § 3730(e)(4)A), to oppose any motion to dismiss based on the public disclosure bar, and, in that circumstance, the Court may not dismiss this action.

PRAYER FOR RELIEF

WHEREFORE, *qui tam* Plaintiff-Relator The Mackinac Center prays for judgment against the Defendants as follows:

1. That Defendants return all PPP money still within their possession, plus appropriate interest;
2. That Defendants cease and desist from violating 31 U.S.C. § 3729 *et seq.*;
3. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of not less than \$11,665 for each violation of 31 U.S.C. § 3729;
4. That Relator be awarded the maximum amount allowed pursuant to § 3730(d) of the False Claims Act;
5. That Relator be awarded all costs of this action, including attorneys' fees and expenses; and
6. That Relator recover such other relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands a trial by jury.

MILLER JOHNSON
Attorneys for Plaintiff

Dated: January 11, 2022

By  _____

James R. Peterson (P43102)

Business Address:

45 Ottawa Ave. SW

Suite 1100

Grand Rapids, MI 49503

Telephone: (616) 831-1700

Email: petersonj@millerjohnson.com

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, ex rel.
MACKINAC CENTER FOR PUBLIC
POLICY,

Plaintiff,

CASE NO.

vs.

JUDGE

THE MICHIGAN EDUCATION
ASSOCIATION, and THE MICHIGAN
EDUCATION SPECIAL SERVICES
ASSOCIATION,

Defendants.

**INDEX OF EXHIBITS
TO COMPLAINT FILED IN CAMERA
AND UNDER SEAL PURSUANT TO 31 U.S.C. §3730(b)(2)**

- Exhibit 1. SBA interim final rules
- Exhibit 2. Borrower application form
- Exhibit 3. SBA procedural notice 20091
- Exhibit 4. SBA spreadsheet
- Exhibit 5. Detroit news article
- Exhibit 6. FOIA
- Exhibit 7. FOIA Response
- Exhibit 8. Mackinac request for comment
- Exhibit 9. MEA response
- Exhibit 10. 2020 LM2
- Exhibit 11. 2021 LM2

EXHIBIT 1

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Rules and Regulations

Federal Register

Vol. 85, No. 73

Wednesday, April 15, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA-2020-0015]

RIN 3245-AH34

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new product, titled the "Paycheck Protection Program," to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020. This interim final rule outlines the key provisions of SBA's implementation of sections 1102 and 1106 of the Act in formal guidance and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment Date: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by number SBA-2020-0015 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833-572-0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding

and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the "Paycheck Protection Program." Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. A more detailed discussion of sections 1102 and 1106 of the Act is found in section III below.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. The immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a full understanding of loan terms and conditions. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title 1 of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before May 15, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Temporary New Business Loan Program; Paycheck Protection Program

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses

affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the "Paycheck Protection Program." Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The following outlines the key provisions of the PPP.

1. General

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of \$349,000,000,000 to provide guaranteed loans under this new 7(a) program. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. For example, for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 "What are SBA's lending criteria?." SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

2. What do borrowers need to know and do?

a. Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:

i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or

B. A tax-exempt nonprofit organization described in section

501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

You must also submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

i. You are engaged in any activity that is illegal under Federal, state, or local law;

ii. You are a household employer (individuals who employ household employees such as nannies or housekeepers);

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or

iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100.

c. How do I determine if I am ineligible?

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.)

d. I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below.

e. How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

i. Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.

ii. Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

iii. Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

iv. Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

v. Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

The examples below illustrate this methodology.

i. Example 1—No employees make more than \$100,000

Annual payroll: \$120,000
Average monthly payroll: \$10,000
Multiply by 2.5 = \$25,000
Maximum loan amount is \$25,000

ii. Example 2—Some employees make more than \$100,000

Annual payroll: \$1,500,000
Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000
Average monthly qualifying payroll: \$100,000
Multiply by 2.5 = \$250,000
Maximum loan amount is \$250,000

iii. Example 3—No employees make more than \$100,000, outstanding EIDL loan of \$10,000.

Annual payroll: \$120,000
Average monthly payroll: \$10,000
Multiply by 2.5 = \$25,000
Add EIDL loan of \$10,000 = \$35,000
Maximum loan amount is \$35,000

iv. Example 4—Some employees make more than \$100,000, outstanding EIDL loan of \$10,000

Annual payroll: \$1,500,000
Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000
Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000
Add EIDL loan of \$10,000 = \$260,000
Maximum loan amount is \$260,000

f. What qualifies as “payroll costs?”

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; 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 separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

g. Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

i. Any compensation of an employee whose principal place of residence is outside of the United States;

ii. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;

iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and

iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Pub. L. 116-127).

h. Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower’s PPP loan calculation.

i. What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent.

The Administrator, in consultation with the Secretary, determined that a one percent interest rate is appropriate. First, it provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus. Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities. For example, the FDIC’s weekly national average rate for a 24-month CD deposit product for the week of March 30, 2020 is 42 basis points for non-jumbo and 44 basis points for jumbo (<https://www.fdic.gov/regulations/resources/rates/>). Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. For example, the yield on the Treasury two-year note is approximately 23 basis points. This higher yield combined with the fact that the loans are 100 percent guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP.

j. What will be the maturity date on a PPP loan?

The maturity is two years. While the Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness (described below), the Administrator, in consultation with the Secretary, determined that a two year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the two year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.

k. Can I apply for more than one PPP loan?

No. The Administrator, in consultation with the Secretary, determined that no eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP

loan you should consider applying for the maximum amount. While the Act does not expressly provide that each eligible borrower may only receive one PPP loan, the Administrator has determined, in consultation with the Secretary, that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan. This limitation will also help advance Congress’ goal of keeping workers paid and employed across the United States.

l. Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes, e-signature or e-consents can be used regardless of the number of owners.

m. Is the PPP “first-come, first-served?”

Yes.

n. When will I have to begin paying principal and interest on my PPP loan?

You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment. The Act authorizes the Administrator to defer loan payments for up to one year. The Administrator determined, in consultation with the Secretary, that a six-month deferment period is appropriate in light of the modest interest rate (one percent) on PPP loans and the loan forgiveness provisions contained in the Act.

o. Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and

any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks/2.5 months = 56 days/76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

p. Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

q. What forms do I need and how do I submit an application?

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described above. The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

r. How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f.);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or

vii. 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 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.

However, at least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. As with the similar limitation on the forgiveness amount explained earlier, the Administrator, in consultation with the Secretary, has determined that 75 percent is an appropriate percentage that will align this element of the program with the loan amount, 75 percent of which is equivalent to eight weeks of payroll. This limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

s. What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

t. What certifications need to be made?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below:¹

i. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.

iii. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the Federal Government may hold me legally liable such as for charges of fraud. As explained above, not more than 25 percent of loan proceeds may be used for non-payroll costs.

iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3871 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

¹ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

3. What do lenders need to know and do?

a. Who is eligible to make PPP loans?

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

ii. The Act provides that the authority to make PPP loans can be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. Since SBA is authorized to make PPP loans up to \$349 billion by June 30, 2020, the Administrator and the Secretary have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by the June 30, 2020 deadline.

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

I. Any federally insured depository institution or any federally insured credit union;

II. 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 and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by this rule; and

III. 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, or the BSA requirements of an equivalent 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 receivables 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 support such institution's lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency.

iv. Qualified institutions described in 3.a.iii.I. and II. will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (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.

b. What do lenders have to do in terms of loan underwriting?

Each lender shall:

i. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;

ii. 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;

iii. 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; and

iv. Follow applicable BSA requirements:

I. 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. PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

II. Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Depending upon

the comparable federally regulated institution, such a program may include a customer identification program (CIP), which includes identifying and verifying their PPP borrowers' identities (including e.g., date of birth, address, and taxpayer identification number), and, if that PPP borrower is a company, following any applicable beneficial ownership information collection requirements. Alternatively, if available, entities may rely on the CIP of a federally insured depository institution or federally insured credit union with an established CIP as part of its AML program. In either instance, entities should also understand the nature and purpose of their PPP customer relationships to develop customer risk profiles. Such entities will also generally have to identify and report certain suspicious activity to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). If such entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at FRC@fincan.gov. In addition, FinCEN has created a COVID-19-specific contact channel, via a specific drop-down category, for entities to communicate to FinCEN COVID-19-related concerns while adhering to their BSA obligations. Entities that wish to communicate such COVID-19-related concerns to FinCEN should go to www.FinCEN.gov, click on "Need Assistance," and select "COVID19" in the subject drop-down list.

Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Application Form." Borrowers must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

c. Can lenders rely on borrower documentation for loan forgiveness?

Yes. The lender does not need 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 Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The Administrator, in

consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

d. What fees will lenders be paid?

SBA will pay lenders fees for processing PPP loans in the following amounts:

- i. Five (5) percent for loans of not more than \$350,000;
- ii. Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- iii. One (1) percent for loans of at least \$2,000,000.

e. Do lenders have to apply the "credit elsewhere test"?

No. When evaluating an applicant's eligibility lenders will not be required to apply the "credit elsewhere test" (as set forth in section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636) and SBA regulations at 13 CFR 120.101).

4. What do both borrowers and lenders need to know and do?

a. What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes including but not limited to:

- i. The guarantee percentage is 100 percent.
- ii. No collateral will be required.
- iii. No personal guarantees will be required.
- iv. The interest rate will be 100 basis points or one percent.
- v. All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

b. Are there any fee waivers?

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

c. Who pays the fee to an agent who assists a borrower?

Agent fees will be paid by the lender out of the fees the lender receives from

SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. 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:

- i. One (1) percent for loans of not more than \$350,000;
- ii. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- iii. 0.25 percent for loans of at least \$2 million.

The Act authorizes the Administrator to establish limits on agent fees. The Administrator, in consultation with the Secretary, determined that the agent fee limits set forth above are reasonable based upon the application requirements and the fees that lenders receive for making PPP loans.

d. Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value. SBA will issue guidance regarding any advance purchase for loans sold in the secondary market.

e. Can SBA purchase some or all of the loan in advance?

Yes. 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. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight week period after loan disbursement. At least 75 percent of the expected forgiveness amount shall be for payroll costs, as provided in 2.c. 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 shall 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; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable. The Administrator, in consultation with the Secretary, determined that seven weeks is the minimum period of time necessary for a lender to reasonably determine the expected forgiveness amount for a PPP loan or pool of PPP loans, since the PPP is a new program and the likelihood that many borrowers will be new clients of the lender. The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans. The Administrator will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.

5. Additional Information

All loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 and bb-3, and SBA regulation at 13 CFR 113.3-1h, which provides that nothing in SBA nondiscrimination regulations shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities. SBA intends to promptly issue additional guidance with regard to religious liberty protections under this program.

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

E.O. 12866 and E.O. 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will impose recordkeeping or reporting requirements under the Paperwork Reduction Act ("PRA"). SBA has obtained emergency approval under OMB Control Number 3245-0407 for the information collection (IC) required to implement the program described above. This IC consists of Form 2483 (Paycheck Protection Program Application Form), SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty), and SBA Form 3506 (CARES Act

Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). The collection is approved for use until September 30, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(9)–(G). Except for such small government jurisdictions, neither State nor local governments are "small entities." Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The agency must, however, publish the certification in the Federal Register at the time of publication of the rule, "along with a statement providing the factual basis for such certification." If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the Federal Register at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 606(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1, p.8*. Accordingly, SBA is not required to conduct a regulatory flexibility analysis. Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Section 1114.

Jovita Carranza,
Administrator.

[FR Doc. 2020-07672 Filed 4-10-20; 4:15 pm]
BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. SBA-2020-0019]

RIN 3245-AH35

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the Federal Register, the U.S. Small Business Administration (SBA) is publishing an interim final rule (the Initial Rule) announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new program, titled the "Paycheck Protection Program," to the SBA's 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). This interim final rule supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules applicable to SBA's implementation of sections 1102 and 1106 of the Act and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2



**Paycheck Protection Program
Borrower Application Form**

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

Check One: <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other	DBA or Tradename if Applicable	
Business Legal Name		
Business Address		
Business TIN (EIN, SSN)		Business Phone
		() -
Primary Contact		Email Address

Average Monthly Payroll:	\$	x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request:	\$	Number of Employees:	
Purpose of the loan (select more than one):					
<input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____					

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (5) or (6) are answered "Yes," the loan will not be approved.

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>



**Paycheck Protection Program
Borrower Application Form**

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- _____ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- _____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- _____ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- _____ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.
- _____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- _____ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- _____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- _____ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

Print Name

Title



**Paycheck Protection Program
Borrower Application Form**

Purpose of this form:

This form is to be completed by the authorized representative of the Applicant and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

Instructions for completing this form:

With respect to "purpose of the loan," payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; 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 separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating "Average Monthly Payroll," most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If Applicant is refinancing an Economic Injury Disaster Loan (EIDL): Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan, to Loan Request as indicated on the form.

All parties listed below are considered owners of the Applicant as defined in 13 CFR § 120.10, as well as "principals":

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to : Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416., and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

Privacy Act (5 U.S.C. 552a) – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below.) Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person's integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

Disclosure of Information – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain "routine uses" of information protected by that Act. One such routine use is the disclosure of information maintained in SBA's system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies' function. See, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

Debt Collection Act of 1982, Default Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles) – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.

Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial



**Paycheck Protection Program
Borrower Application Form**

institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

Freedom of Information Act (5 U.S.C. 552) – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

Occupational Safety and Health Act (15 U.S.C. 651 et seq.) – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

Equal Credit Opportunity Act (15 U.S.C. 1691) – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700) – By submitting this loan application, you certify that neither the Applicant or any owner of the Applicant have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3



SBA Procedural Notice

TO: All SBA Employees and Paycheck Protection Program Lenders

CONTROL NO.: 5000-20091

SUBJECT: Second Updated Paycheck Protection Program Lender Processing Fee Payment and 1502 Reporting Process

EFFECTIVE: February 8, 2021

The purpose of this Notice is to update SBA Procedural Notice 5000-20036, effective July 13, 2020, which informs Paycheck Protection Program (PPP) Lenders of the reporting process through which PPP Lenders will report on PPP loans and collect the processing fee on fully disbursed loans that they are eligible to receive. This update addresses changes made by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (P.L. 116-260), including new First Draw PPP Loans and Second Draw PPP Loans.

What is the PPP processing fee that SBA will pay to Lenders?

For First Draw PPP Loans made before December 27, 2020, including authorized increases on those First Draw PPP Loans,¹ SBA will pay Lenders fees for processing the loans in the following amounts:

- Five (5) percent for loans of not more than \$350,000;
- Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- One (1) percent for loans of at least \$2,000,000.

For First Draw PPP Loans made on or after December 27, 2020, SBA will pay Lenders fees for processing those loans in the loans in the following amounts:

- Fifty (50) percent or \$2,500, whichever is less, for loans of not more than \$50,000;
- Five (5) percent for loans of more than \$50,000 and not more than \$350,000;
- Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- One (1) percent for loans of at least \$2,000,000.

¹ See, SBA Procedural Notice 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, issued on January 13, 2021, for specific information regarding payment of processing fees on authorized loan increases.

For Second Draw PPP Loans, SBA will pay Lenders fees for processing those loans in the following amounts:

- Fifty (50) percent or \$2,500, whichever is less, for loans of not more than \$50,000;
- Five (5) percent for loans of more than \$50,000 and not more than \$350,000; and
- Three (3) percent for loans above \$350,000.

Under 15 U.S.C. § 636(a)(36)(P) and 15 U.S.C. § 636(a)(37)(L), all processing fees are based on the balance of the PPP loan outstanding at the time of full disbursement of the loan.

How can Lenders request payment of PPP processing fees?

When a PPP Lender successfully reports to SBA that a First Draw PPP Loan or Second Draw PPP Loan has been fully disbursed, SBA will initiate the process of paying the PPP processing fee that the PPP Lender is eligible to receive. Lenders will use an SBA Form 1502 (1502 report) to report fully disbursed loans to SBA (the process of which is outlined in this Notice below).

Additionally, in the Lender's Fiscal Transfer Agent (FTA) Lender portal, the Lender must have provided ACH credit information for an account owned by the Lender and must make a one-time confirmation² that all PPP loans for which the Lender will be requesting a processing fee have been fully disbursed on the disbursement dates and in the loan amounts reported.

Upon receipt of a complete set of SBA Form 1502 data, SBA will:

- Except for authorized increases on First Draw PPP Loans, confirm that no previous request has been made for a processing fee on the loan, and no processing fee payment has been made previously by SBA on the loan.
- Confirm that the disbursed amount reported on the 1502 report matches the approval amount in E-Tran.
- Calculate the processing fee owed based on the final fully disbursed amount entered by the Lender.
- Submit the fee calculated by SBA to the Lender using the ACH credit information provided by the Lender.

How do Lenders create an account (i.e., enroll) in the FTA's Lender Portal?

Before Lenders can receive a PPP processing fee or begin monthly loan reporting, they must establish a Lender portal account with the FTA to access the 1502 Dashboard.

Existing SBA Lenders with SBA Form 750 agreements will access the 1502 Dashboard with their current FTA Lender portal account. **Lenders must use separate 1502 reports for PPP**

² Pursuant to SBA Procedural Notice 5000-20076, by submitting a 1502 report on a First Draw PPP Loan or a Second Draw PPP Loan on or after January 13, 2021, any Lender that submitted a 1502 report for a PPP loan before January 13, 2021 agrees to a revision to the one-time confirmation previously made by the Lender.

loans (including both First Draw PPP Loans and Second Draw PPP Loans) and regular 7(a) loans.

PPP Lenders who do not already have an account with the FTA can enroll by sending an email to Enrollment@colsonservices.com that contains the following:

- Name of Institution;
- At least two of the following:
 - E-Tran Main Location ID (CAFS Location ID under which loans were originated);
 - One of SBA's PPP GP loan numbers; and
 - Colson Lender ID (if known);
- Individual user contact information:
 - Name;
 - Email address; and
 - Phone number.

Lender Service Providers: Lender Service Providers (LSPs) providing services for PPP Lenders under a reviewed LSP agreement who do not already have an account with the FTA can enroll by sending an email to Enrollment@colsonservices.com that contains the following:

- Name of LSP;
- LSP CAFS Partner ID;
- Individual user contact information:
 - Name;
 - Email address; and
 - Phone number;

For each bank partner, provide the information below:

- Bank partner's information:
 - Bank name;
 - E-Tran Main Location ID
- One of SBA's PPP GP loan numbers;
- Colson Lender ID (if known);
- Bank Authorizing Official
 - Name;
 - Email address; and
 - Phone number.

Upon receipt of a complete enrollment email, the FTA will send login credentials consisting of a 1502 Dashboard User ID and Access Code. The User ID and Access Code will be sent in separate e-mails.

Once the Lender has successfully logged into its Lender portal account, the Lender must provide the ACH credit information for the account where the Lender wishes to receive PPP processing fees. The ACH credit information must be for an account owned by the Lender. SBA will not make any payments to LSPs.

A Lender portal user guide is available at <https://colsonservices.bnymellon.com/locale-assets/pdf/1502-dashboard-user-guide.pdf>. Questions on the enrollment process may be directed to Colson Customer Service at 877-245-6159.

May Lenders or LSPs share login credentials for the FTA Lender Portal?

No. Login credentials for the 1502 Dashboard are issued at the individual user level and may not be shared among users.

How do Lenders report to SBA on loans that are fully disbursed?

Lenders must report First Draw PPP Loans and Second Draw PPP Loans that have been fully disbursed to SBA via SBA Form 1502 (1502 report). Lenders must electronically submit SBA Form 1502 reporting information to the SBA within 10 calendar days after disbursement of a PPP loan.³ Thereafter, Lenders must submit PPP loan information to SBA on a monthly basis.

SBA Form 1502 is a spreadsheet containing identifying information for each PPP loan. An SBA Form 1502 spreadsheet is available at <https://colsonservices.bnymellon.com/locale-assets/xls/sba-form-1502-blank-template.xlsx>.

Lenders may submit the 1502 report to SBA using any of the following methods:

- Email the 1502 spreadsheet to 1502@colsonservices.com;
- Upload the 1502 spreadsheet (“e-File”) in 1502 Dashboard; or
- Deliver the 1502 spreadsheet via Secure File Transfer Protocol (SFTP) – Requires additional enrollment. Lenders should email SFTPaccess@colsonservices.com for additional instructions.

Lenders may batch multiple PPP loans in a single 1502 report, or Lenders may complete a 1502 report on an individual PPP loan basis. There is no limit on how frequently Lenders can submit 1502 reports.

Important: Lenders must use separate 1502 reports for PPP loans (including both First Draw PPP Loans and Second Draw PPP Loans) and regular 7(a) loans.

After receiving the 1502 report, the FTA will notify the Lender of any errors through 1502 Dashboard exception reporting. Lenders should monitor the 1502 Dashboard daily. The Lender will have until 5:00 p.m. Eastern on the second business day after submitting the 1502 report to correct any errors within the 1502 Dashboard. On the third business day after receiving the 1502 report, and provided that the ACH information and one-time lender confirmation have been entered, SBA will initiate the process for payment of the processing fee to the Lender.

How do Lenders report a PPP loan as fully disbursed on the 1502 report?

Lenders must submit a complete and accurate 1502 report. Each of the fields on the 1502 report is described below:

³ If the tenth calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day.

- **SBA GP Number:** The 10 digit numerical SBA assigned loan identification number. The GP number is the key to identifying Paycheck Protection Program (PPP) loans on the SBA's and the FTA's databases. If less than 10 digits are reported, the disbursement information cannot be processed.
- **Lender Loan Number:** The Lender's loan identification number; that is, the number the Lender has assigned to the loan. This field is optional.
- **Next Installment Due Date:** The date the borrower is scheduled to make its first payment following the Program's automatic deferment period. As a placeholder, this date should be listed as sixteen months from the date of loan disbursement. After SBA remittance of any partial forgiveness payment or SBA notice that no forgiveness is allowed, the deferment period ends and the Lender must update this date to correspond to the first payment due date the Lender provides to the borrower.
- **Status:** Leave blank
- **Amount Disbursed this Period on Total Loan:** The total amount disbursed on the loan. PPP loans must be fully disbursed, and the amount reported in this field must match the loan approval amount in SBA's electronic system.
- **Amount Undisbursed on Total Loan:** PPP loans must be fully disbursed. Enter \$0.00.
- **Interest Rate:** All PPP loans have an interest rate of 1 percent. Enter 1% or leave blank.
- **Guar. Portion Interest:** Enter \$0.00.
- **Guar. Portion Principal:** Enter \$0.00.
- **Total to FTA:** Enter \$0.00. There are no Guar. Portion Payments or SBA ongoing servicing fees on PPP loans.
- **Interest Period From:** Leave Blank.
- **Interest Period To:** Report the date interest accrues from (e.g., one-time, full disbursement date or first disbursement date, if applicable) in this column.
- **# of Days:** Leave Blank.
- **Calendar Basis:** Leave Blank.
- **Guar. Portion Closing Balance:** The balance outstanding after the full disbursement. This amount should be equal to the Amt Disbursed this Period on Total Loan. PPP loans are 100% guaranteed by SBA and must be fully disbursed.
- **Remittance Penalty:** Enter \$0.00. There are no SBA Subsidy Recoupment Fees or Late Penalties for PPP loans.

How do Lenders report authorized loan increases on First Draw PPP Loans on the 1502 report?

Lenders that make authorized increases on First Draw PPP Loans should report those increases on the 1502 report by following the instructions in SBA Procedural Notice 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, issued on January 13, 2021.

How do Lenders report a PPP loan as cancelled in E-Tran Servicing?

Lenders must request access to E-Tran Servicing in their <https://caweb.sba.gov> account (which is different than the FTA Lender portal account) through the Lender's authorizing official.

From E-Tran Servicing, search for the SBA loan number.

Once the loan number comes up, click on the cancel button at the top of the page. This will cancel the loan and the loan guaranty. Questions on cancellations can be emailed to 7aQuestions@sba.gov.

How do Lenders report a PPP loan as voluntarily terminated and repaid after disbursement on the 1502 report?

From E-Tran Servicing, search for the SBA loan number.

Once the loan number comes up, click on the voluntary termination button at the top of the page. This will terminate the loan guaranty. Questions on voluntary termination can be emailed to: For the Fresno Servicing Center: fsc.servicing@sba.gov; for the Little Rock Servicing Center: lrsc.servicing@sba.gov.⁴

What confirmation must the Lender make before receiving PPP processing fees?

Lenders must make a one-time confirmation in the Lender's FTA Lender portal before SBA will disburse PPP processing fees to Lender. Lenders will confirm the following:

By checking the "I confirm" box below, the Lender is agreeing that for each SBA Form 1502 report submitted by Lender to request payment of First Draw Loan or Second Draw Loan Paycheck Protection Program (PPP) processing fees, Lender confirms that:

- (1) except for any First Draw Loan included in the report that has been or may be increased, (a) all First Draw Loans and Second Draw Loans included in the report were fully disbursed to the borrowers on the disbursement dates entered and in the loan amounts entered in the report, and (b) Lender will make no further disbursements on the First Draw Loans and Second Draw Loans included in the report;
- (2) for any First Draw Loan included in the report that has been or may be increased, (a) Lender approved the increase in accordance with PPP requirements, (b) Lender has fully disbursed the increased amount to the borrower on the disbursement date entered and in the amount entered in the report, and (c) Lender will make no further disbursement on the First Draw Loan;
- (3) all information in the report is true and correct; and
- (4) the report has been submitted by an authorized employee or agent of Lender acting within the scope of Lender's authority and Lender acknowledges responsibility for all entries and certifications made on its behalf.

⁴ The geographic coverage of the Fresno Servicing Center is SBA Regions 5, 6 (except for Arkansas, Oklahoma and Texas) 7, 8, 9, and 10. The geographic coverage of the Little Rock Servicing Center is SBA Regions 1, 2, 3, 4, and 6 (except New Mexico and Louisiana).

When won't a Lender receive a processing fee?

A Lender will not receive a processing fee:

- Prior to full disbursement of the PPP loan; or
- If the PPP loan is cancelled before disbursement; or
- If the PPP loan is cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repays the PPP loan proceeds to conform to the borrower's certification regarding the necessity of the PPP loan request).⁵

How will SBA disburse the processing fee to Lenders?

SBA will make PPP processing fee payments to Lenders using the Demand Deposit Account ACH information supplied by Lenders on the FTA's website. SBA will make a payment for each loan on an individual basis so that Lenders will be able to match the received payment with the corresponding loan. Each disbursement will be made by ACH CCD+, and the addenda record will use the structured layout that is available in the Downloads section of the FTA's website. This structured layout includes payment details that Lenders can use for automating the posting of these payments to the Lender's record system. For Lenders unable to automate the posting of these payments, the record layout should be referenced to determine what the payment is for when posting the payment manually.

Will SBA review the payment of Lender processing fees?

SBA may review the payment of Lender processing fees at the time of forgiveness purchase or at any other time SBA deems appropriate. If SBA determines the fee was paid erroneously or in the incorrect amount, Lender is responsible for repaying the fee to SBA.

Are Lender processing fees subject to claw back if a Lender has not fulfilled its obligations under PPP regulations?

A lender is required to repay the processing fee to SBA if a lender is found guilty of an act of fraud in connection with the PPP loan. In such case, the PPP loan is not eligible for a guaranty.

Is a Lender responsible for the actions of its Lender Service Provider (LSP)?

If the Lender authorizes an Agent or Lender Service Provider (as those terms are defined in 13 CFR § 103.1) to submit any information or make any entries or certifications on the Lender's behalf for any purpose through the 1502 Dashboard or through any other method of 1502 reporting, the Lender acknowledges that the Agent or LSP is acting within the scope of Lender's authority and Lender acknowledges responsibility for all information submitted and entries and certifications made on its behalf.

⁵ If the Lender has received a processing fee on a loan that was cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repaid the PPP loan proceeds to conform to the borrower's certification regarding the necessity of the PPP loan request), SBA will not require the Lender to repay the processing fee unless the Lender is found guilty of an act of fraud in connection with the PPP loan.

When a loan is sold, which Lender is responsible for 1502 reporting to SBA?

When a PPP Lender sells all of its interest in a PPP loan to another participating Lender, in bulk or individually, SBA will send the processing fee to the originating PPP Lender.⁶ The Lender making the disbursement is responsible for completing and submitting the initial 1502 report on loan disbursement. The purchasing Lender will be the party responsible to SBA with respect to all servicing actions, including monthly 1502 reporting and requests for loan forgiveness, and will be the party eligible for the guaranty purchase of a PPP loan.

What are the ongoing reporting requirements for PPP loans?

Lenders must electronically submit SBA Form 1502 reporting information to the SBA within 10 calendar days after disbursement of a PPP loan. After submitting the initial SBA Form 1502 report, Lenders must submit PPP loan information to SBA on a monthly basis.

Lenders must provide monthly 1502 reports that include loan status information for their PPP loans regardless of whether the borrower made a payment in the current month. (All PPP loans are deferred.)⁷ Lenders must continue reporting on a loan until the Lender notifies SBA that the loan has been paid in full.

After a Lender reports a loan as fully disbursed, the Lender must submit monthly PPP 1502 reports on or before the 15th of each month, or if the 15th is not a business day, on the next business day after the 15th. Lenders must continue to use separate 1502 reports for PPP loans (including both First Draw PPP Loans and Second Draw PPP Loans) and regular 7(a) loans. The regular 7(a) loan 1502 report and payment due dates for calendar year 2021 remain unchanged, as published in SBA Information Notice 5000-20066 issued December 4, 2020.

After a Lender receives a PPP forgiveness remittance from SBA, if no loan balance remains, the Lender must report the PPP loan as paid in full on the next SBA Form 1502 report. If a loan balance remains after a Lender receives a PPP forgiveness remittance from SBA, the Lender must report the reduction in the loan balance for the forgiveness amount on the next SBA Form 1502 report and must service the remaining balance of the loan in accordance with PPP requirements. The Lender must wait to receive the PPP forgiveness remittance from SBA before submitting a 1502 report showing the PPP loan as paid in full or a balance reduction due to forgiveness. Premature 1502 reporting of forgiveness will cause the Lender's forgiveness remittance from SBA, if any, to fail validation.

Note: A PPP loan should not be reported as "paid in full" simply because it has been transferred to another Lender.

⁶ As discussed in SBA Procedural Notice 5000-20076, processing fees on authorized loan increases will be paid to the originating PPP Lender.

⁷ The deferment period runs until (i) the date that SBA remits the forgiveness amount (or notifies the Lender that the borrower is not eligible for forgiveness) or (ii) for a borrower that does not submit a timely forgiveness application, 10 months after the end of the loan forgiveness covered period.

How do Lenders report a change in the maturity of a PPP loan?

For PPP loans made before June 5, 2020, the maturity is two years; however, borrowers and Lenders may mutually agree to extend the maturity of such loans to five years. Lenders must report any such change in the maturity of a PPP loan through E-Tran Servicing.

Questions

Questions concerning this Notice may be directed to the Lender Relations Specialist in the local SBA Field Office.

Dianna L. Seaborn
Director
Office of Financial Assistance

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

LoanNumber	DateApproved	SBAOfficeCode	ProcessingMethod
2829627309	4/29/2020		515 PPP
1119597303	4/28/2020		515 PPP

BorrowerName

MICHIGAN EDUCATION ASSOCIATION - NEA
MICHIGAN EDUCATION SPECIAL SERVICES ASSOCIATION

BorrowerAddress

1216 KENDALE BLVD,
PO BOX2560 1475 Kendale Blvd

BorrowerCity	BorrowerState	BorrowerZip	LoanStatusDate	LoanStatus	Term
EAST LANSING	MI	48826-2573	1/14/2021	Paid in Full	24
EAST LANSING	MI	48826-2560		Exemption 4	24

SBAGuarantyPercentage	InitialApprovalAmount	CurrentApprovalAmount	UndisbursedAmount
100	6420500	6420500	0
100	6130300	6130300	0

FranchiseName	ServicingLenderLocationID	ServicingLenderName	ServicingLenderAddress'
	33850	Comerica Bank	1717 Main St
	33850	Comerica Bank	1717 Main St

ServicingLenderCity	ServicingLenderState	ServicingLenderZip	RuralUrbanIndicator
DALLAS	TX	75201-4612	U
DALLAS	TX	75201-4612	U

HubzoneIndicator	LMIIndicator	BusinessAgeDescription	ProjectCity
N	N	Existing or more than 2 years old	EAST LANSING
N	N	Existing or more than 2 years old	EAST LANSING

ProjectCountyName	ProjectState	ProjectZip	CD	JobsReported	NAICSCode	Race
INGHAM	MI	48826-2573	MI-08	285	813930	Unanswered
INGHAM	MI	48826-2560	MI-08	275	524210	Unanswered

Ethnicity	UTILITIES_I PAYROLL_PROCEED	MORTGAGE_INTEREST_PROCEED
Unknown/NotStated	5136421	1284079
Unknown/NotStated	4904242	1226058

RENT_PROCEED REFINANCE_EIDL_PROCEED HEALTH_CARE_PROCEED DEBT_INTEREST_PROCEED

BusinessType	OriginatingLenderLocationID	OriginatingLender	OriginatingLenderCity
Non-Profit Organization	33850	Comerica Bank	DALLAS
Non-Profit Organization	33850	Comerica Bank	DALLAS

OriginatingLenderState	Gender	Veteran	NonProfit
TX	Unanswered	Unanswered	Y
TX	Unanswered	Unanswered	Y

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

The Detroit News

BUSINESS

Bell's Brewery, MEA, DSO recipients of large Paycheck Protection loans

Jordyn Grzelewski and Kalea Hall The Detroit News

Published 7:50 p.m. ET Jul. 6, 2020 | Updated 9:20 p.m. ET Jul. 6, 2020

High-profile businesses and nonprofits, including the Michigan Education Association, Crain Communications Inc., the Detroit Symphony Orchestra and Bell's Brewing Inc. are among the 120,000-plus Michigan organizations to receive funding through a federal small-business loan program aimed at shoring up payrolls amid the coronavirus crisis.

That's according to data released Monday by the U.S. Small Business Administration, the administrator of the Paycheck Protection Program. In all, 121,135 loans totaling nearly \$16 billion were approved in Michigan as of the end of June, according to the SBA.

The Detroit News examined data on Michigan organizations that received more than \$2 million in funding. The SBA did not report specific loan amounts businesses received, but provided ranges that began at \$150,000 to \$350,000, to as high as \$5 million to \$10 million. Some of the prominent recipients include:

\$5 million to \$10 million:

- Albion College, a small liberal arts college in Calhoun County, 498 jobs retained
- Bell's Brewery Inc., 500 jobs retained
- Crain Communications Inc., 500 jobs retained
- Michigan Education Association, 285 jobs retained
- Detroit-based law firm Miller, Canfield, Paddock and Stone PLC, 313 jobs retained

\$2 million to \$5 million:

- Archdiocese of Detroit, 206 jobs retained
- Detroit Symphony Orchestra, 214 jobs retained
- Detroit Institute of Arts, 200 jobs retained
- Detroit Zoological Society, 165 jobs retained

Honigman LLP, a large Detroit-based law firm, is listed as receiving a \$5 million to \$10 million loan, but when contacted by The Detroit News, said it had decided in May to return the money.

The figures on jobs retained are based on what the companies listed on their applications.

The list of businesses and institutions in this story is by no means comprehensive, and is simply a sampling of well-known recipients in the state. The full list can be downloaded from the SBA's website.

The Michigan Education Association, an East Lansing-based labor union representing teachers, faculty and education support staff, said it received a \$6.4 million loan: "With 285 employees across Michigan, we're proud that we've been able to do the right thing and continue to pay employees during the pandemic, despite uncertainty on the horizon," spokesman Doug Pratt said in statement to The News. "The PPP program has helped us do that."

Pratt said teachers continued to pay their union dues while staying on the payroll during the pandemic. Asked why the MEA needed the loan if dues continued to be paid, he responded by email, "There is pandemic-induced uncertainty on the horizon relative to the funding situation for public education. We hope the U.S. Senate addresses the funding needs for Michigan's students and educators."

Comstock-based Bell's Brewery received a \$7 million loan, which prevented the business from laying off about 130 people, according to Larry Bell, president of the brewing company. Close to 40% of Bell's business comes from bars and restaurants, he said. With those shut down during the stay-at-home order in Michigan, Bell's business was hit hard in April and May: "We pretty much lost 38% of our business overnight."

The shutdown came at the worst time for the brewery, which was looking forward to celebrating the release day for its seasonal beer, Oberon: "We had about 38,000 kegs of Oberon ready to go out in the marketplace for Oberon opening day, which is one of our biggest events of the year all over the state and the Midwest," Bell said. "So, overnight we lost an incredible amount of business and we found ourselves in a position where we were going to have to buy back beer that couldn't be used."

The loan has been "essential" for the brewery, Bell said: "There were some dark days there ... looking at how many people were going to lose jobs."

Detroit Symphony Orchestra event cancellations due to COVID-19 "significantly impacted our revenue, and the economic uncertainty made the Paycheck Protection Program loan necessary to support ongoing DSO operations," spokesman Matt Carlson said in a statement. "The loan helped us to retain all full-time employees, continue to provide health insurance, and, together with across-the-board salary reductions and a board-led Resilience Fund campaign, has provided stability for the organization and anticipation of a balanced budget."

KC Crain, president and chief operating officer of media publisher Crain Communications, said in a statement, "The program did exactly what it was designed to do. It assisted Crain by covering the majority of our payroll and rent expenses, allowing us to maintain staffing levels and pay throughout the covered eight-week time period."

Ned McGrath, director of public affairs for the Archdiocese of Detroit, said in a statement, "The PPP helped retain thousands of workers" in six southeast Michigan counties. "These workers include office managers who maintain essential day-to-day operations in our parishes, program managers who kept food pantries open, and teachers and staff who administered and delivered distance learning for tens of thousands of students."

The other listed recipients could not be reached for comment or did not respond by press time.

The release of the data trove follows conflicting statements by President Donald Trump's administration about how much information it would release about loan recipients. Treasury Secretary Steve Mnuchin previously caused an uproar about the transparency of the program by telling Congress the government would not release the names of borrowers, a statement he later walked back.

Monday's release, however, is not complete; for loans of less than \$150,000, the SBA is not providing the names or addresses of recipients. Those recipients make up the majority of borrowers, although the SBA and Treasury Department noted that loans of more than \$150,000 account for nearly 75% of the loan dollars approved.

In Michigan, the majority of loans — nearly 102,000 — were for less than \$150,000.

The program, created as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was signed into law in March, was designed to help small businesses, many of which had to close their doors because of stay-at-home orders, keep employees on payroll at organizations with up to 500 workers. If they meet certain criteria, employers can apply to

have the loans forgiven. The loan amount an organization is eligible for is based on the size of its payroll.

"While the pandemic has greatly impacted our economy, in the true spirit of entrepreneurship, small businesses have shown they are resilient and stronger," Rob Scott, administrator of the SBA's Great Lakes region, said in a statement Monday. He noted that thanks to a recent extension, businesses now have more time to seek a loan. The program's application process reopened Monday and will remain open through Aug. 8, with \$131 billion in funding still available.

The program has stirred controversy over complaints from some small business owners who reported difficulty in applying, especially during the first round of the program, and because a number of publicly-traded companies were revealed to have received funding.

The Washington Post reported Monday that some 90,000 businesses received loans, despite not reporting how many jobs they would retain or stating they would not retain any jobs. Further, the Post found, millions of loan dollars went to private equity-backed chains and to companies owned by members of Congress.

The data on Michigan recipients indicates that some businesses in the state also did not report how many jobs they would retain with the loan money, or in some cases reported zero jobs would be retained.

jgrzelewski@detroitnews.com

Twitter: @JGrzelewski

khall@detroitnews.com

Twitter: @bykaleahall

EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

January 26, 2021

City, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, Eighth Floor
Washington, D.C., 20416
Attn: FOIA@sba.gov

Via E-mail

To Whom it May Concern,

Pursuant to the Freedom of Information Act, I respectfully request the following records:

1. A copy of any applications for Paycheck Protection Program ("PPP") loans by the Michigan Education Association ("MEA") and Michigan Education Special Services Association ("MESSA"). For your convenience, the following information may assist in your search:
 - a. MEA's NAICS number is 813930, and its underlying lender was Comerica Bank. Its application was made on April 29, 2020. The MEA's EIN is 39-0827000.
 - b. MESSA's NAICS number is 524210, and its underlying lender was Comerica Bank. Its application was made on April 28, 2020, MESSA's EIN is 38-1641634.
2. Any documents in SBA's possession which demonstrate that MEA and MESSA are eligible for PPP funding, despite being 501(c)(5) and 501(c)(9) organizations respectively.
3. Any documents in SBA's possession which demonstrate that MEA's and MESSA's eligibility for PPP funding was not independently reviewed by the SBA.
4. Any documents provided to SBA that attest to MEA and MESSA maintain the non-profit status required to be eligible for PPP funding.

Please provide these records in an electronic format, to the e-mail address listed below my signature.

If the documents I have requested are not disclosable in their entirety, I request that you release all nonexempt portions of the documents that may be segregated and all parts of the documents that can be rendered disclosable by redaction. As to any portion of the documents that you withhold, please state with specificity the legal and factual basis for withholding such portion, as well as the nature of the information being withheld. Further, if no responsive documents exist for a particular

portion of this request, please clearly identify which portions of this request have been denied for that reason.

As a member of the news media, I respectfully request that search fees and review fees be waived. If fees are not waived in their entirety, please contact me if the total cost of this request will exceed \$500.00. I am willing to pay appropriate statutory fees to the extent a fee exemption is not applicable. I can be reached at 989-698-1955.

Sincerely,

Tom Gantert, Managing Editor of Michigan Capital Confidential
104 West Main Street
Gantert@mackinac.org

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF CAPITAL ACCESS

October 21, 2020

Tom Gantert
skorup@mackinac.org

Dear Mr. Gantert:

This letter is in response to your Freedom of Information Act ("FOIA") request no. SBA-HQ-2020-002834.

Your request states:

"Pursuant to the Freedom of Information Act, I respectfully request the following records:

1. A copy of any applications for Paycheck Protection Program ("PPP") loans by the Michigan Education Association ("MEA") and Michigan Education Special Services Association ("MESSA"). For your convenience, the following information may assist in your search:

a. MEA's NAICS number is 813930, and its underlying lender was Comerica Bank. Its application was made on April 29, 2020. The MEA's EIN is 39-0827000.

b. MESSA's NAICS number is 524210, and its underlying lender was Comerica Bank. Its application was made on April 28, 2020. MESSA's EIN is 38-1641634.

2. Any documents in SBA's possession which demonstrate that MEA and MESSA are eligible for PPP funding, despite being 501(c)(5) and 501(c)(9) organizations respectively.

3. Any documents in SBA's possession which demonstrate that MEA's and MESSA's eligibility for PPP funding was not independently reviewed by the SBA.

4. Any documents provided to SBA that attest to MEA and MESSA maintain the non-profit status required to be eligible for PPP funding..."

All publicly available information regarding PPP loans can be found at the following link:
www.sba.gov/ppp.

Portions of the data are being withheld pursuant to FOIA Exemptions 4 and 6. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). Exemption 6 protects information when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Loan-level data that implicates concerns about personal privacy and confidential, proprietary, and commercially sensitive business information is being withheld.

Please note, loan applications are filed and maintained with the Lender, and the Agency does not have those applications.

Mr. Gantert
Page 2

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,

/s/ William J. Briggs

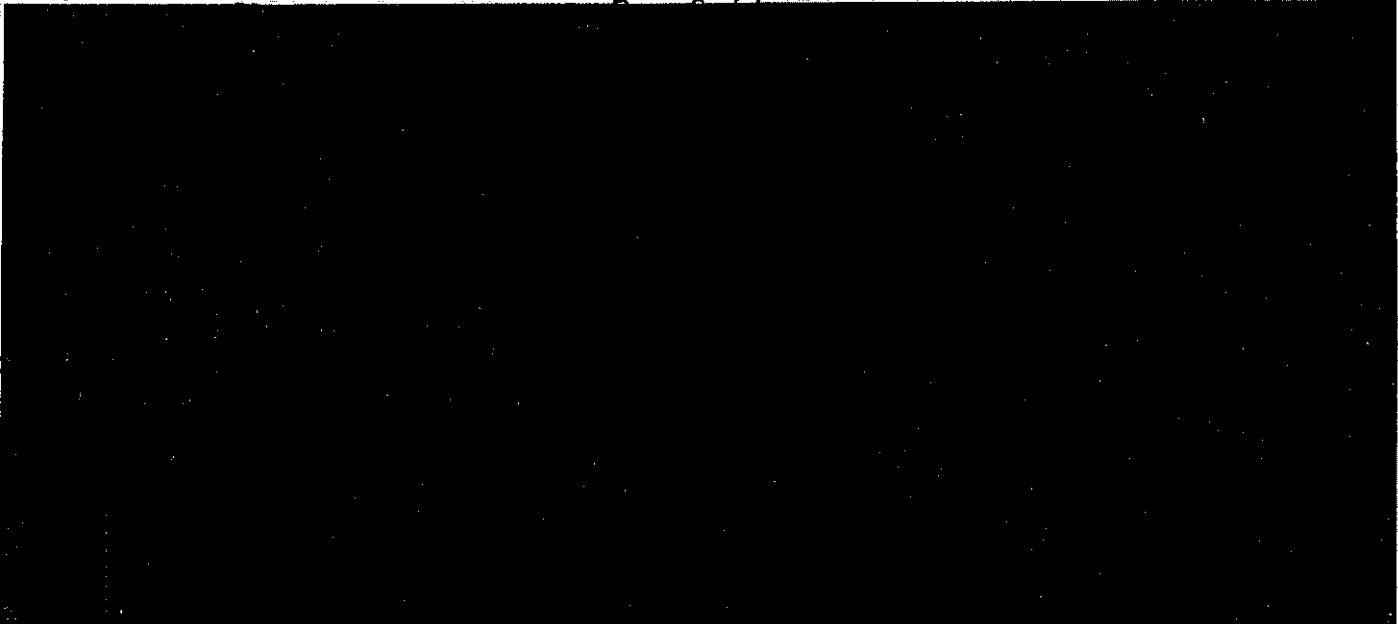
William J. Briggs
Deputy Associate Administrator
Office of Capital Access
U.S. Small Business Administration

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8



From: Dawson Bell <dawson_bell@icloud.com>
Date: January 10, 2021 at 1:48:10 PM EST
To: Doug Pratt <dpratt@mea.org>
Cc: dcrim@mea.org
Subject: Media Inquiry

Doug Pratt-

Hello. Dawson Bell here, longtime Lansing area journalist now writing independently.

I've been asked by the editors at MI Capitol Confidential to examine the circumstances under which the MEA and its affiliate, MESSA, qualified for loans under the CARES act PPP program in 2020.

Analysts at the Mackinac Center have examined the criteria established by the SBA for PPP loan eligibility and cannot identify any that appear to apply to MEA or MESSA. Loans for non-profits, under the legislation and rules adopted by SBA, are limited to 501 (c) (3), (c) (19) veteran organizations and tribal business concerns.

Neither MEA, a 501 (c) (5) labor organization, nor MESSA, a 501 (c) (9) voluntary employees benefit association, appear to qualify under those standards.

I spoke to a representative of SBA and several independent attorneys and policy analysts who said the circumstances under which the loans were approved were puzzling, bordering on the inexplicable. The AFL-CIO, as you may know, published a guide to CARES act financial aid available to labor organizations that also cited the exclusion of labor unions under the PPP loan program.

1:43 PM Sun Jan 10

Prepared by the AFL-CIO

Key Federal COVID-19 Relief Progra
For Unions, AFL-CIO Central Labor 1

	Description
Paycheck Protection Program (PPP) CARES Act	SBA-guaranteed, private-lender, low-interest loans available for payroll, employee health insurance, mortgage interest, rent, and other fixed costs; 1.0% interest rate; repayment deferral

But without an examination of the underlying documents, which are presumably in the possession of the lender and, of course, the MEA, no one I contacted could rule out a possible explanation.

I am asking for one.

Please respond at your earliest convenience. I have been asked to prepare an article for CapCon as soon as possible.

Thank you,

Dawson B

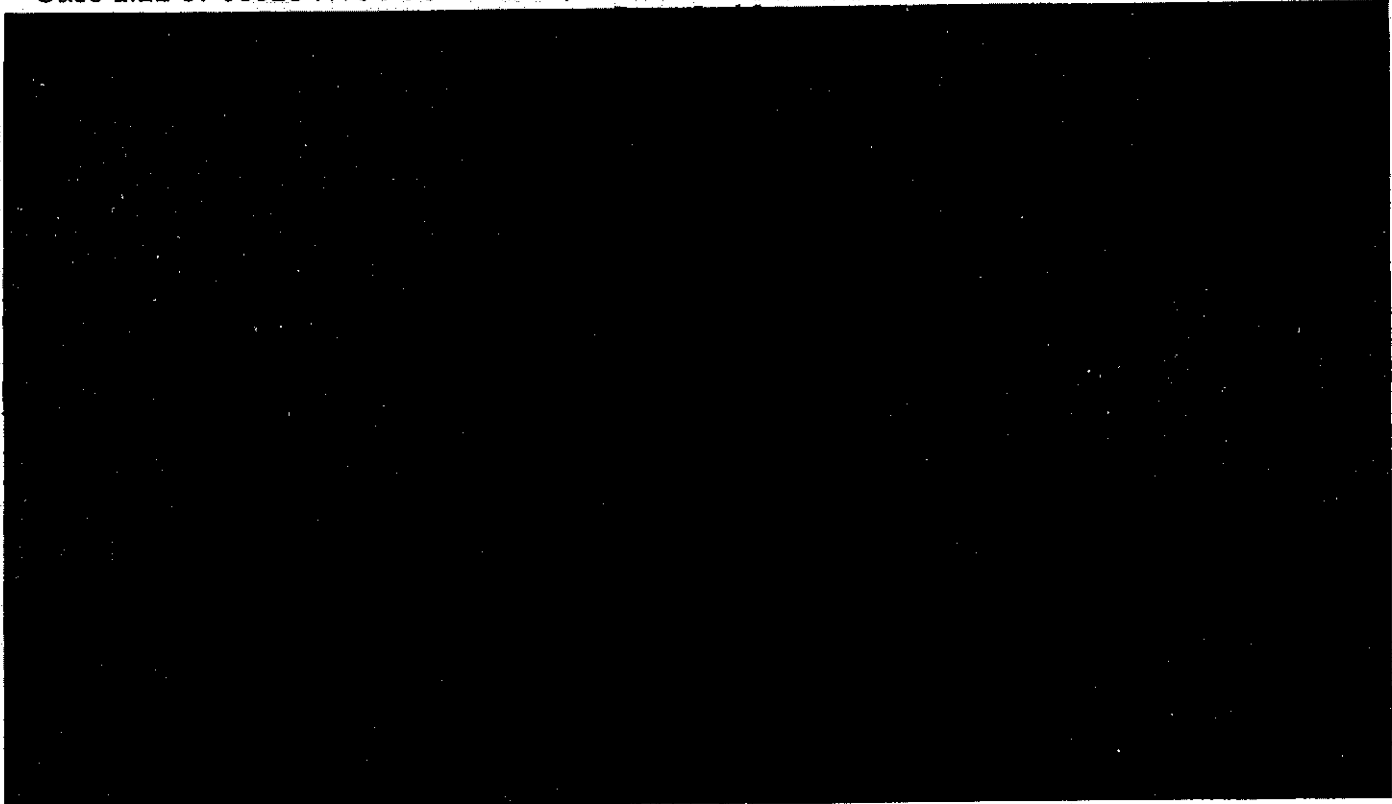
517-256-8863

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9



From: "Boyd, Elizabeth" <EBoyd@mea.org>
Date: January 10, 2021 at 3:59:48 PM EST
To: dawson_bell@icloud.com
Cc: "Pratt, Doug" <DPratt@mea.org>
Subject: Response

Dawson,

Regardless of your deadline, here is a response to your question regarding PPP. You can attribute it to me.

"At the time of applying for the PPP loans, we believed doing so was the right decision given the guidelines available at the time and the tremendous uncertainty facing our organizations. However, as each organization independently prepared for the loan forgiveness application and reviewed final rules promulgated after the loans were funded, the organizations each believed we would be ineligible for forgiveness. As such, both MEA and MESSA paid back the PPP loans in full prior to the end of the calendar year." Liz Boyd, MEA spokeswoman.

Dawson, if you're hung up on titles mine is Temporary Communications Consultant. Will you confirm you received?
Many thanks.

Liz