



## CARES Act Assistance Checklist

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

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

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

- A small business concern (as defined in the Small business Act).
- Any business concern; 501(c)(3); 501(c)(19) veterans' organization; or Tribal business
  - With not more than 500 employees;<sup>2</sup> or
  - the applicable size standard for its NAICS code (if higher than 500).
- Sole proprietor; independent contractor; or other self-employed individual.
- An entity that:
  - Has more than one physical location;
  - Employs no more than 500 employees per physical location; and
  - Is assigned a NAICS code beginning with 72 (accommodation and food services) at the time of disbursement.
- Any business concern with:<sup>3</sup>
  - A maximum tangible net worth that is not more than \$15 million; and
  - the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

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

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

<sup>3</sup>The SBA's Paycheck Protection Program Loans Frequently Asked Questions, Answer to Question #2, provides this "alternative size standard" for Paycheck Protection Program loan eligibility. Sec. 1102(a)(2)(36)(D)(iv).

Affiliation Waiver<sup>4</sup> - Not required to count affiliated businesses as part of the entity if one of the following:

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

Religious Exemption<sup>5</sup> – Faith-based organizations are not considered affiliates of other organizations if the relationship is based on religious teaching or belief or otherwise constitutes a part of the exercise of religion.

Affiliation Tests<sup>6</sup> – there are four tests for affiliation applicable to the Paycheck Protection Program:

- Affiliation based on ownership<sup>7</sup>
  - A PPP applicant is an affiliate of an individual, concern or entity that owns or has the power to control more than 50% of the business's voting equity
  - A minority shareholder will be deemed in control by the SBA if the individual or entity has the power to prevent a quorum or otherwise block an action by the board of directors or the shareholders, unless the minority shareholder irrevocably waives or relinquishes any existing rights under 13 C.F.R. § 121.301(f)(1).
- Affiliation based on power to control in connection with:<sup>8</sup>
  - Stock options, convertible securities, and agreements to merge; or
  - An individuals', concerns', or other entities' ability to divest ownership interest through options, convertible securities, or agreements that appear to terminate control before actually doing so.
- Affiliation based on management<sup>9</sup> – Affiliation arises when:
  - A single individual, concern, or entity, or the management (e.g., President, CEO, managing members) of the applicant small business concern also controls the management of one or more other concerns; or
  - A single individual, concern, or entity controls the management of the applicant concern through a management agreement.
- Affiliation based on identity of interest<sup>10</sup>
  - Affiliation arises between close relatives<sup>11</sup>, defined as a spouse, a parent, or a child or sibling, or the spouse of any such person, with identical or substantially identical business or economic interests.

Lender Considerations for Eligibility<sup>12</sup>

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

Borrower Certification<sup>13</sup> - A good faith certification that:

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

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<sup>4</sup> Sec. 1102(a)(2)(36)(D)(iv).

<sup>5</sup> The SBA's Second Interim Final Rule exempted religious organizations from the affiliation rules and amended the text of 13 C.F.R. 121.103(b) to account for the religious exemption.

<sup>6</sup> The four affiliation tests arise from 13 C.F.R. § 121.301(f). The remaining affiliation tests listed under 13 C.F.R. § 121.301(f) were excluded, presumably intentionally, from the U.S. Department of the Treasury's Applicable Affiliation Rules fact sheet and the SBA's Second Interim Final Rule.

<sup>7</sup> 13 C.F.R. § 121.301(f)(1).

<sup>8</sup> 13 C.F.R. § 121.301(f)(2).

<sup>9</sup> 13 C.F.R. § 121.301(f)(3).

<sup>10</sup> 13 C.F.R. § 121.301(f)(4)(ii).

<sup>11</sup> Sec. 1102(a)(2)(36)(F)(ii)(II).

<sup>12</sup> Sec. 1102(a)(2)(36)(G)(i)(I)-(IV).

<sup>13</sup> Sec. 1110(a)(2)(A)-(E).

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

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

Eligible Entity<sup>14</sup> - must qualify as at least one of the following:

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

Emergency EIDL Grant<sup>15</sup> - any eligible entity that applies for an EIDL in response to COVID-19 during the covered period,<sup>14</sup> may request up to a \$10,000 advance, if:

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

Restrictions<sup>16</sup>

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

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<sup>14</sup> Sec. 1110(e).

<sup>15</sup> Covered period" means from 01/31/20 – 12/31/20.

<sup>16</sup> Sec. 1102(a)(2)(36)(F)(iv); Sec. 1102(a)(2)(36) (Q).

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

Eligibility<sup>17</sup> - must qualify as at least one of the following:

- Passenger air carrier.<sup>18</sup>
- Cargo air carrier.
- An eligible business<sup>19</sup> that is both:
  - Certified under 14 C.F.R. 145 (Repair Stations), and
  - Approved to perform inspection, repair, replace, or overhaul services.
- Ticket agents.<sup>20</sup>
- A business critical to maintaining national security.

Conditions<sup>21</sup>- All apply:

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

Financial Protection of Government<sup>22</sup> - Loan will be issued only if one of the following is met:

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

Limitations on Certain Employee Compensation<sup>23</sup> - All of the following apply until one year after the loan is repaid:

- No officer or employee whose total pay<sup>24</sup> exceeded \$425,000 in 2019 will:<sup>25</sup>
  - Receive more compensation than they received in 2019; or
  - Receive severance pay or other termination benefits, that exceeds twice their 2019 compensation.
- No officer or employee whose total comp exceeded \$3 million in 2019 may receive, during any consecutive 12-month period, total compensation above:
  - \$3,000,000; plus
  - 50% of the excess over \$3 million of the total compensation received in 2019.

<sup>17</sup> Sec. 4003(b)(1)-(3).

<sup>18</sup> Air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." 49 U.S.C. 40102(2).

<sup>19</sup> An "eligible business" under this part, is defined as "an air carrier, or a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees under the CARES Act." Sec. 4002(4).

<sup>20</sup> Ticket agent' means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation." 49 U.S.C. 40102(45).

<sup>21</sup> Sec. 4003(c)(2)(A)-(I).

<sup>22</sup> Sec. 4003(d).

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

### A. Main Street New Loan Facility: <sup>26</sup>

#### Eligible Loans

- Four year maturity
- No principal or interest payments for one year
- Minimum \$1 million loan
- Maximum loan size is the lesser of:
  - o \$25 million; or
  - o An amount not more than four times the Eligible Borrower's 2019 EBITDA
- Prepayment permitted without penalty

#### Eligible Business

- US business with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues
- Significant operations in the US
- Majority of employees based in the US
- Not participating in the Main Street Expanded Loan Facility or the Primary Market Corporate Credit Facility

### B. Main Street Expanded Loan Facility: <sup>27</sup>

#### Eligible Loans

- Four year maturity
- No principal or interest payments for one year
- Minimum \$1 million expanded loan
- Maximum expanded loan size is the lesser of:
  - o \$150 million;
  - o 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt; or
  - o An amount not greater than six times the Eligible Borrower's EBITDA
- Prepayment permitted without penalty

#### Eligible Business

- US business with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues
- Significant operations in the US
- Majority of employees based in the US
- Not participating in the Main Street New Loan Facility or the Primary Market Corporate Credit Facility

<sup>23</sup> Sec. 4004(a).

<sup>24</sup> Total compensation "includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business." Sec. 4004(b).

<sup>25</sup> All references to 2019 mean calendar year 2019.

<sup>26</sup> Sec. 4003(c)(3)(D)(ii). The Federal Reserve Board (Federal Reserve) and the Secretary of the Treasury released additional information regarding the Main Street New Loan Lending Facility on April 9, 2020, effective immediately. The combined size of both Main Street Loan facilities will be up to \$600 billion.

<sup>27</sup> Sec. 4003(c)(3)(D)(ii). The Federal Reserve Board (Federal Reserve) and the Secretary of the Treasury released additional information regarding the Main Street Expanded Loan Lending Facility on April 9, 2020, effective immediately. The combined size of both Main Street Loan facilities will be up to \$600 billion.

**C. Restrictions and Certifications for the Main Street Lending Programs**

Certification<sup>28</sup> – The Eligible Borrower must certify all of the following:

- The Eligible Borrower requires financing due to the exigent circumstances presented by the COVID-19 pandemic
- The Eligible Borrower will make reasonable efforts to maintain its payroll and retain its employees
- The Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower
- The Eligible Borrower will refrain from using the proceeds of the Eligible Loan to repay other loan balances
- The Eligible Borrower will not seek to cancel or reduce any of its outstanding lines of credit with the Eligible Lender or any other lender
- The Eligible Borrower is committed to repaying the Eligible Loan in full before repaying other debt of equal or lower priority, with exception of mandatory principal payments
- The Eligible Borrower meets the EBITDA leverage condition for the Eligible Loan
- The Eligible Borrower will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.
- The Eligible Borrower is eligible in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act

Restrictions<sup>29</sup> - Must agree to all of the following:

- No buybacks of borrower stock on national securities exchange, unless contractually obligated as of the date of the Act, until one year after repayment.
- No buybacks of borrower's parent's stock on national securities exchange, unless contractually obligated as of the date of the Act, for so long as the loan is outstanding.
- No dividends or other capital distributions regarding common stock until one year after repayment. Borrower will comply with the compensation limits set forth in Sec. 4004.<sup>30</sup>

**D. General Lending:**

Eligible Business:<sup>31</sup>

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

Restrictions<sup>32</sup> - Must agree to all of the following:

- No buybacks of borrower stock on national securities exchange, unless contractually obligated as of the date of the Act, until one year after repayment.
- No buybacks of borrower's parent's stock on national securities exchange, unless contractually obligated as of the date of the Act, for so long as the loan is outstanding.
- No dividends or other capital distributions regarding common stock until one year after repayment.
- Borrower will comply with the compensation limits set forth in Sec. 4004.<sup>33</sup>

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<sup>28</sup> These certifications were listed in the Federal Reserve guidance for both the Main Street New Loan and Main Street Expanded Loan Facilities. The Main Street Lending term sheets omitted some restrictions imposed on mid-sized businesses found in Sec. 4003(C)(3)(D)(i) of the Act. However, it is likely these restrictions still apply and Treasury will add those requirements in as a condition to participation.

<sup>29</sup> Sec. 4003(c)(3)(A)(ii).

<sup>30</sup> These limitations are outlined under Section III of this checklist: "Limitations on Certain Employee Compensation."

<sup>31</sup> Sec. 4002(4).

<sup>32</sup> Sec. 4003(c)(3)(A)(ii).

<sup>33</sup> These limitations are outlined under Section III of this checklist: "Limitations on Certain Employee Compensation."