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SBA Issues Interim Final Rules on Paycheck Protection Program

The Small Business Administration (SBA) released regulations on the Paycheck Protection Program (PPP) in the form of two interim final rules: one on the [program generally](#) and the other on the program's [affiliation requirements](#). For an overview of the Program, which was part of the CARES Act, please see our alert, [here](#).

The key takeaways of the interim final rule are as follows:

- At least 75% of the loan proceeds must be used for payroll costs, which are broadly defined to include wages, commissions, vacation pay, separation pay, employee benefits, including group health coverage, and state and local taxes on compensation. Federal employer payroll taxes are not included in the definition of payroll costs.
- The remaining 25% may be used for the other permitted purposes; rent, utilities, and mortgage interest. These percentages are also used in the criteria for forgiveness of the loans.
- Independent contractors and payments to owners should not be included when calculating payroll costs. The guidance now is that independent contractors should separately apply for a PPP loan.
- Non-US resident employees should not be included for purposes of determining whether a business has more than 500 employees and for the payroll cost calculation.
- Any portion of the loan that is not forgiven will have a 2 year term and 1% interest rate. The Act allowed for loan terms up to 10 years and interest rates up to 4% but SBA determined that the 2 year term was adequate time for businesses to stabilize and repay the loans.
- The [interim final affiliation rule](#) and [related guidance](#) on affiliation for purposes of the PPP clarify that affiliation is determined under the requirements of [13 C.F.R. 121.301\(f\)](#) (as in effect prior to a February 2020 amendment of that section, which has been repealed by the CARES Act). Notably, however, the new guidance does not provide relief from these affiliation rules to private equity and venture capital portfolio companies when determining whether they meet the 500 or fewer employee requirement.
- The [interim final affiliation rule](#) further clarifies that the affiliation rules do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any other person, group, organization, or entity that is



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based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion. On a related note, the SBA has issued [FAQ](#) on participation by faith-based organizations in the PPP and Economic Injury Disaster Loan Program authorized under the CARES Act.

Small businesses and nonprofits should contact their lenders and prepare and submit their applications as soon as possible.

Additional Resources

- [Complying with Paid Leave Requirements Under the Families First Coronavirus Response Act](#) (April 1)
- [The CARES Act and Nonprofits](#) (March 31)
- [UPDATED: Treasury Department Extends April 15 Tax Filing and Payment Deadlines](#) (March 25)
- [Managing Contractual Relationships During the COVID-19 Crisis: Force Majeure Clauses and Other Approaches](#) (March 18)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

Contact Us

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