

Nonprofit FAQ CARES Act Paycheck Protection Program

Last Updated: April 4, 2020

Overview:

- Although nonprofit organizations have not traditionally been eligible for financial assistance from the Small Business Administration (“SBA”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) expressly designates certain types of nonprofit organizations as being eligible recipients of loans under the Paycheck Protection Program (the “PPP”) provided under Sections 1102 and 1106 of the CARES Act.
- This Nonprofit FAQ sets forth answers to some frequently asked questions concerning the PPP. It is based on the Interim Final Rules (“IFR”) promulgated by the SBA implementing the relevant sections of the CARES Act, which were released on April 2 and 3, 2020 and published in the Federal Register at 13 CFR Part 120, as well as additional guidance in the form of a “frequently asked questions” document regarding the participation of faith-based organizations in the PPP, which was released on April 3, 2020.
- This Nonprofit FAQ focuses on tax-exempt nonprofit organizations recognized under 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”). The CARES Act defines the term “*nonprofit organization*” 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” (as used herein, a “nonprofit” or “nonprofits”). This Nonprofit FAQ does not address for-profit small businesses, veterans’ organizations, Tribal business concerns, or other business concerns that may be eligible for a loan under the PPP.

Frequently Asked Questions:

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| <p>Should my organization apply for a Paycheck Protection Loan from the SBA?</p> | <p>A nonprofit may wish to consider applying for a Paycheck Protection Loan (“PPP Loan”) if:</p> <ul style="list-style-type: none"> • Current economic uncertainty makes a PPP Loan necessary to support the ongoing operations of the nonprofit; and • The nonprofit would need to consider laying off, terminating, or reducing the hours or the compensation of its employees but for the funds supplied by a PPP Loan. <p>Note: A nonprofit will still need to qualify as an eligible recipient to receive a PPP Loan and to certify that the PPP Loan will only be used for authorized purposes (as described below).</p> |
| <p>Is my organization an “eligible recipient”?</p> | <p>In general, a nonprofit qualifies as an <i>eligible recipient</i> if:</p> <ul style="list-style-type: none"> • It is an organization that is described in section 501(c)(3) of the Code and exempt from taxation under section 501(a); • It was in operation on February 15, 2020; • It paid salaries and payroll taxes for employees or paid independent contractors before February 15, 2020; and • It has 500 or fewer employees whose principal place of residence is in the United States. |

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| <p>My organization is a church or faith-based organization—do we meet the eligibility requirements?</p> | <p>Yes, churches (a term that includes temples, mosques, synagogues, and other houses of worship) as well as integrated auxiliaries of churches and conventions or associations of churches qualify for PPP Loans as long as they meet the requirements of section 501(c)(3) of the Code. Churches need not have applied to the Internal Revenue Service (“IRS”) to receive tax-exempt status. That is, they are not required to have filed a Form 1023 application and to have received an IRS “determination letter” to qualify for a PPP Loan. Other nonprofits, however, are required to have applied for and obtained recognition of tax-exempt status from the IRS to qualify for PPP Loans.</p> <p>Note: Under the SBA’s regulations in 13 CFR 120.110, both “nonprofit businesses” and “businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting” are ineligible for SBA loans. But the IFR waives eligibility restrictions that ordinarily apply to nonprofits (<i>see</i> IFR, III.2(c)). The IFR also states that the SBA’s traditional nondiscrimination regulations will not apply to religious corporations, associations, educational institutions, or societies in certain limited circumstances. (<i>See</i> IFR, III.5). The SBA has issued additional guidance regarding protections for religious liberty under the PPP, which is available here.</p> |
| <p>Could my organization be ineligible even if it meets the eligibility requirements?</p> | <p>Yes, a nonprofit could be ineligible if:</p> <ul style="list-style-type: none"> • It is engaged in any activity that is illegal under federal, state, or local law; or • It or any business that it owns or controls: <ul style="list-style-type: none"> ○ 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. |
| <p>How much can my organization borrow?</p> | <p>Under the PPP, the maximum loan amount a nonprofit may borrow is the lesser of:</p> <ul style="list-style-type: none"> • \$10 million, or • The result of the <i>payroll-based formula</i> specified in the CARES Act. |
| <p>What is the “payroll-based formula” for calculating the maximum loan amount my organization may borrow?</p> | <p><u>The Payroll-Based Formula:</u></p> <p><i>Step 1:</i> Calculate aggregate payroll costs (discussed below).</p> <p><i>Step 2:</i> Subtract any compensation paid to an employee in excess of \$100,000 in annual salary.</p> <p><i>Step 3:</i> Divided by 12 to calculate average monthly payroll costs.</p> <p><i>Step 4:</i> Multiply the average monthly payroll costs by 2.5.</p> <p><i>Step 5:</i> Add (if applicable) any 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.</p> |
| <p>What qualifies as “payroll costs”?</p> | <p><u>Payroll costs include:</u></p> <ul style="list-style-type: none"> • Employee salaries, wages, commissions, or similar compensation; • Cash tips or equivalent; • Payment for vacation, parental, family medical, or sick leave; • Severance payments; |

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| | <ul style="list-style-type: none"> • Payment for employee health care benefits, including insurance premiums; • Payment for employee retirement benefits; and • Payment of state or local taxes assessed on employee compensation. <p><u>Payroll costs exclude:</u></p> <ul style="list-style-type: none"> • Compensation of any employee whose principal residence is outside the United States; • Compensation of any employee in excess of an annualized annual salary of \$100,000; • Federal income tax and payroll tax contributions between February 15, 2020, and June 30, 2020; and • Qualified sick and family leave wages covered by tax credits under the Families First Coronavirus Response Act (“<u>FFCRA</u>”). |
| <p>Do independent contractors count as “employees” for the purpose of calculating payroll costs?</p> | <p><u>No</u>, independent contractors do not count for the purpose of calculating a nonprofit’s payroll costs because independent contractors may apply independently for a PPP Loan.</p> <p><u>Note 1:</u> The CARES Act defines “<i>employee</i>” as an individual employed on a full-time, part-time, or other basis. We understand “other basis” to include seasonal employees that work periodically for a nonprofit, e.g., during a performance run.</p> <p><u>Note 2:</u> Nonprofits should consider advising their independent contractors to apply separately for a PPP Loan.</p> |
| <p>What is the interest rate on a PPP Loan?</p> | <p>1% per annum.</p> |
| <p>What is the maturity dated on a PPP Loan?</p> | <p>Two years.</p> |
| <p>Can my organization apply for more than one PPP Loan?</p> | <p><u>No</u>, nonprofits and other eligible borrowers may receive only one PPP Loan. Accordingly, SBA recommends that eligible borrowers consider applying for their maximum loan amount when they apply for a PPP Loan.</p> |
| <p>Can my organization use e-signatures or e-consents?</p> | <p><u>Yes</u>, e-signatures and e-consents can be used in the PPP application materials. Your lender may have different or additional requirements, however.</p> |
| <p>Is the PPP first-come, first-served?</p> | <p><u>Yes</u>. We anticipate that there will be more demand for PPP Loans than the \$349 billion allocated to the program. Nonprofits interested in obtaining a PPP Loan should apply as soon as possible.</p> |
| <p>When will my organization have to begin paying principal and interest on a PPP Loan?</p> | <p>Payments are deferred for <i>six months</i> following disbursement of a PPP Loan; however, <i>interest will accrue</i> during this six-month deferment period.</p> |
| <p>Can a PPP Loan be forgiven in whole or in part?</p> | <p><u>Yes</u>, a PPP Loan can be forgiven up to the full principal amount and any accrued interest to the extent of the borrower’s <i>documented</i> payroll costs (as discussed above), rent, utility payments, and interest payments on mortgages, in each case paid during the eight-week period following the date of the loan (the “<u>Forgiveness Period</u>”).</p> <p><u>Note:</u> Loan forgiveness may be <i>reduced</i> if more than 25% of the proceeds from a PPP Loan are used for non-payroll costs during the Forgiveness Period, e.g., rent,</p> |

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| | <p>mortgage interest, and utility payments. Additional guidance on loan forgiveness is expected from SBA.</p> |
| <p>Do independent contractors count as employees for the purpose of PPP loan forgiveness?</p> | <p><i>No</i>, independent contractors do not count for the purpose of calculating a nonprofit’s loan forgiveness because independent contractors may apply independently for a PPP Loan.</p> <p><i>Note:</i> As noted above, nonprofits should consider advising their independent contractors to apply separately for a PPP Loan.</p> |
| <p>How can my organization submit an application for a PPP Loan?</p> | <p>A nonprofit must submit an SBA application Form 2483 and payroll documentation to a participating SBA lender. Locate participating lenders by zip code here.</p> <p><i>Note 1:</i> Lenders may require additional information beyond the documentation required by the PPP application.</p> <p><i>Note 2:</i> Because of the high demand for PPP Loans, many lenders have said that they will initially work only with current customers with whom they have a pre-existing lending relationship. Nonprofits interested in seeking a PPP Loan should contact their existing banks as soon as possible to determine bank-specific requirements related to application processing.</p> |
| <p>How may funds from a PPP Loan be used by my organization?</p> | <p>A nonprofit must use at least 75% of the proceeds from a PPP Loan for payroll costs.</p> <p><i>Note:</i> SBA has identified the following as permitted uses of PPP Loan funds:</p> <ol style="list-style-type: none"> 1. Payroll costs (including for faith-based organizations salaries of ministers and other staff involved in the organization’s religious mission); 2. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; 3. Interest payments on mortgages and pre-existing debt (but not prepayments or principal payments); 4. Rent payments; 5. Utility payments; and 6. Refinancing (if applicable) an EIDL made between January 31, 2020 and April 3, 2020. |
| <p>What happens if funds from a PPP Loan are misused by my organization?</p> | <p>SBA will require nonprofits to repay any amounts from a PPP Loan that are used for unauthorized purposes. Nonprofits will also be subject to additional liability, including fraud, if they knowingly use funds from a PPP Loan for unauthorized purposes. SBA will have recourse against your organization if funds from a PPP Loan are used for unauthorized purposes.</p> <p><i>Note:</i> Officers and directors will have fiduciary duties regarding the use of funds from a PPP Loan as well.</p> |
| <p>What certifications does my organization need to make as part of PPP Loan application process?</p> | <p>An authorized representative of the nonprofit applicant must certify in good faith to all of the below:</p> <ol style="list-style-type: none"> 1. It was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes, or it paid independent contractors as reported on a Form 1099-MISC. 2. It is applying for a PPP Loan because current economic uncertainty makes a loan request necessary to support its ongoing operations. 3. It will use PPP Loan funds to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; |

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| | <p>it understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold it legally liable, such as for charges of fraud.</p> <ol style="list-style-type: none"> 4. It will provide to the lender 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 the date of the loan. 5. It understands loan forgiveness will be limited to the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. 6. It has not and will not receive another PPP Loan during the period beginning on February 15, 2020 and ending on December 31, 2020. 7. It certifies that (a) the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects; and (b) it understands 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 30 years and/or a fine of not more than \$1,000,000. 8. It acknowledges that the lender will confirm the eligible loan amount using tax documents it has submitted, and it affirms that these tax documents are identical to those submitted to the Internal Revenue Service. It also understands, acknowledges, and agrees 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. <p>Note: As explained above, if more than 25% of PPP Loan funds are used for non-payroll costs, then that excess amount will not be forgiven.</p> |
| <p>What are the loan terms and conditions of a PPP Loan?</p> | <p>PPP Loans will be guaranteed under the PPP under the same terms, conditions, and processes as other SBA 7(a) loans, with certain changes, including but not limited to:</p> <ul style="list-style-type: none"> • SBA guarantees 100% of the PPP Loan. • No collateral will be required. • No personal guarantees will be required. • All loans will be processed by SBA lenders and SBA 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. |
| <p>Are there any fee waivers for a PPP Loan?</p> | <p><u>Yes</u>, fees otherwise payable by borrowers are waived under the PPP.</p> |
| <p>MORE DETAILED INFORMATION</p> | |
| <p>What documents will my organization need for the PPP application process?</p> | <p>Nonprofits should begin gathering documentation to expedite the PPP application process. Although requirements will vary by lender, we anticipate lenders will likely</p> |

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| | <p>require or request the following organizational information:</p> <ol style="list-style-type: none"> 1. Employer Identification Number or EIN 2. Copy of IRS Form 1023 (other than for churches that have not sought an IRS determination of tax-exempt status); 3. Copy of the IRS 501(c)(3) Determination Letter (including any relevant IRS correspondence) (other than for churches); 4. Form 990 and Form 990-T for 2019 (if applicable); 5. Copy of Articles/Certificate of Incorporation (including any amendments); 6. Copy of Bylaws (including any amendments); 7. Certificates of Good Standing in (a) the jurisdiction of incorporation and (b) the relevant jurisdiction where the nonprofit organization is qualified as a foreign entity registered to do business; 8. Board of directors’ authorizing resolution (if required under organizational documents) for PPP-covered loan debt incurrence; 9. Documentation of payroll costs incurred in the one-year period before the anticipated loan date; and 10. Documentation relating to any existing SBA loan. |
| <p>My organization, a church, is part of a broader group of churches. Will other churches be considered “affiliates” that must be counted for purposes of meeting eligibility requirements and calculating payroll costs?</p> | <p>Generally, <i>no</i>. In recognition of the constitutional and statutory protections for free exercise of religion, SBA has said that it will not examine polity or otherwise question the eligibility of churches for PPP Loans based upon whether or how the church applying for a loan is affiliated with other churches. To claim the advantage of this rule, a church should include with its PPP application a separate document, entitled “Addendum A,” with the following text:</p> <p style="text-align: center;">ADDENDUM A</p> <p>The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because the Applicant has made a reasonable, good faith determination that the Applicant qualifies for a religious exemption under 13 C.F.R. 121.103(b)(10), which says that “[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization . . . if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.”</p> |

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| <p>My organization is not a church, but it is faith-based. How do the affiliation rules apply in that context?</p> | <p>If the relationship of a faith-based organization to another organization cannot in good faith be described as “based on a religious teaching or belief or [to] otherwise constitute[] a part of the exercise of religion,” then the exemption described above does not apply, and use of the addendum is inappropriate.</p> <p>But even if such exemption does not apply, the PPP eligibility criteria “are satisfied for any faith-based organization having not more than 500 employees (including individuals employed on a full-time, part-time, or other basis) that pays federal payroll taxes using its own Internal Revenue Service Employer Identification Number (EIN) or that would be eligible for a deduction under the second sentence of 26 U.S.C. 512(b)(12) if the organization earned unrelated business taxable income.” 13 CFR § 121.103(b)(10)(i).</p> |
| <p>My organization is not a church or other faith-based organization. How do I determine whether my organization has affiliates that must be counted for purposes of meeting eligibility requirements and calculating payroll costs?</p> | <p>Under the standard SBA rules for SBA 7(a) loans (of which PPP Loans are a part), <i>affiliates</i> are generally aggregated for purposes of determining eligibility. This means nonprofits should aggregate employees of affiliates for purposes of meeting the eligibility requirements and calculating payroll costs.</p> <p>Under the standard SBA rules, <i>affiliation</i> is determined on a case-by-case basis looking at the totality of the circumstances, considering, among other things:</p> <ul style="list-style-type: none"> • Common ownership (generally control of 50% of voting equity or board seats); • Negative control via charter or contractual vetoes, covenants, or protective provisions; • Common management, either at the officer or board level; and • Other factors, such as economic dependence, common investments, franchise agreements, or an identity of interest. <p>Note: The CARES Act states that the provisions applicable to affiliations under 13 CFR 121.103 apply to nonprofits for purposes of the PPP (see Sec. 1102(a)(2)(D)(vi) regarding “Affiliation”). The SBA’s guidance regarding nonprofit affiliation issues has thus far been limited to faith-based organizations.</p> <p>Although determinations regarding “affiliation” may require examination of an organization’s articles and bylaws and consideration of state-law requirements as well as detailed factual and legal inquiry, the following general guidelines may be useful:</p> <ul style="list-style-type: none"> • A nonprofit that has no members, or whose members do not select the members of the board, and whose management is independent of other organizations, does not have affiliates. • A nonprofit with a broad-based membership and one-member, one-vote rules likely need not worry about affiliation unless it has a brother-sister relationship or shares management with another nonprofit. • If a nonprofit is owned by another entity, if another entity has the power to appoint the board of directors, or if another entity exercises control over the nonprofit’s management, the nonprofit should consider that other entity an affiliate. |