

PUBLICATION

SBA's Paycheck Protection Program: Additional Guidance Issued on April 6

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On March 27, President Donald Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which among other COVID-19 relief items, provides \$349 billion in Paycheck Protection Program (PPP) loans for small businesses as well as other businesses and non-profit organizations that meet certain criteria. On April 2, the Small Business Administration (SBA) issued an interim final rule implementing the PPP.

On April 6, after consultation with industry groups representing both borrowers and lenders, the SBA in consultation with the U.S. Department of the Treasury issued a set of [FAQs](#) to provide borrowers and lenders guidance in complying with the provisions of the CARES Act and the PPP interim final rule. Importantly, the U.S. government has committed to not challenging any lender actions under the PPP that conform to the FAQs. Among other important explanations in the FAQs, here are some highlighted ones:

- FAQ No. 2 clarifies that some businesses with over 500 employees are eligible for PPP loans if the business otherwise meets the definition of a "small business concern." A business with more than 500 employees may still be a "small business concern" if it either:

Meets its relevant employee-based or revenue-based [SBA size standard](#) corresponding to its industry; or

Has a tangible net worth of not more than \$15 million and average after-tax net income of not more than \$5 million for the two fiscal years before the date of the application.

- The FAQs address some issues related to borrower affiliation rules and customer due diligence by lenders. The FAQs clarify (i) use of the gross payroll method for both loan application and forgiveness; (ii) the \$100,000 salary limitation does not include healthcare, retirement benefits, and state and local taxes; (iii) borrowers that use professional employer organizations can include payroll costs; and (iv) the time period for calculating payroll costs.

The SBA has stated that it expects to regularly update the FAQs on an ongoing basis.

Baker Donelson is working hard to assist clients in these unprecedented times. Our team of attorneys and advisors continues to monitor and advise on new issues as they develop. For specific guidance or more information on this alert, please contact [David Webb](#) or [Taylor Tipton](#). For more information and general guidance on how to address legal issues related to COVID-19, please visit the [Coronavirus \(COVID-19\): What you Need to Know](#) information page on our website.